IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 33 of 1994
with
CRIMINAL APPEAL No. 491 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALUBHAI DANABHAI PATEL
Versus
THE STATE OF GUJARAT

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Appearance :
MR JM PANCHAL for Appellant
MR SS PATEL APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 07/09/2006

ORAL JUDGMENT

[1] Criminal Appeal No.33/1994 is preferred by the appellant – accused under Section 374(2) of the Criminal Procedure Code, 1973 and is directed against the judgment and order dated 22.04.1993 delivered by the Special Judge, Panchmahal at Godhra in Special (Corruption) Case No.10/1989 whereby the appellant of Criminal Appeal No.33/1994 came to be convicted for the offences punishable under Section 161 of the Indian Penal Code as well as under Section 5(1) (d) to r/w. Section 5(2) of the Prevention of Corruption Act, 1947 and he was sentenced to undergo rigorous imprisonment of one year for each of the above two offences and to pay fine of Rs.200/- for each of the two offences, in default to undergo rigorous imprisonment of one month. Vide impugned judgment and order, it is directed that both the sentences to run concurrently.

[2] While Criminal Appeal No.491/1994 is

preferred by the State of Gujarat under Section 376 of the Criminal Procedure Code, 1973 for enhancement of the sentences awarded to the accused in Special (Corruption) Case No.10/1989 and the appellant of Criminal Appeal No.33/1994.

[3] The facts leading to the prosecution against the appellant of Criminal Appeal No.33/1994 can shortly be depicted as under:-

[3.1] The complainant – Jitendrakumar Nanalal Raval originally resident of village Choila, Taluka: Bayad, District: Sabarkantha joined in service as teacher in Primary Section (School) from January, 1986 at village Gundikheda, Taluka: Dahod, District: Panchmahal. In the month of February, 1986, he was required to appear in examination of Hindi and, therefore, he had to go to his native town. According to him, he obtained leave for that purpose on 15th February, 1986. Thereafter, he over stayed and could not join the duty till 18th February, 1986. During that period, the accused – Kalubhai Danabhai Patel, who was

serving as an Area Inspector, during relevant juncture, in Dahod Taluka Panchayat, Education Department, visited Gundikheda for inspection at the school where the complainant was serving. It is the say of the complainant that the accused signed his Register and, thereafter, he met with his landlord Shri Gomabhai Handa. About the absence of the complainant from the school, Shri Gomabhai Handa informed the accused that the complainant had been of station. When complainant returned from his native town, his landlord – Shri Gomabhai Handa informed him (complainant) that accused had visited and had directed the complainant to meet the accused. Shri Gomabhai Handa also stated to the complainant that he had given Rs.75/- to the accused on behalf of the complainant. On 19th February, 1986, the complainant met the accused and asked the advice about the leave period of his absence from the school for 3 to 4 days as his job was new and temporary. The accused informed the complainant that the complainant should pay Rs.100/- to him and the matter would come to an end there. Thus

on 19th February, 1986, according to the demand of the accused, complainant paid Rs.100/-. Thereafter, on 4th March, 1986, an annual inspection of the school at Gundikheda was arranged and accused – appellant visited the school of the complainant. At that time, accused threatened the complainant that the complainant was not running the school properly and that his job might be terminated. The complainant sought the advice of the accused again. There accused thereupon demanded Rs.100/- from the complainant. At that juncture, the complainant had Rs.85/- which he paid to the accused at the Bus Stand of village Gundikheda. The accused stated to the complainant that the complainant was still required to pay more amount. Thereafter, through the landlord (Shri Gomabhai Handa) of the complainant, accused conveyed the message to the complainant that he should meet the accused. The complainant could not visit the accused and instead on 27th March, 1986, he visited Gandhinagar and represented before the Hon'ble the then Education Minister Shri Hasmukhbhai

Patel about the harassment of the complainant by the accused. The Hon'ble Minister advised to file the complaint before Anti Corruption Bureau, if the accused demanded more amount. On 30th April, 1986, landlord - Shri Gomabhai Handa of the complainant informed him that the accused – appellant had summoned the complainant at Dahod to meet him. He was further informed that the complainant was required to go with all preparation. On 1st May, 1986 in the morning, complainant had been to Dahod where he came to know that the appellant – accused was to go to Godhra. Therefore, complainant went straight to Godhra and waited at S.T. Bus Stand. At about 11.45 a.m., the appellant appeared at Godhra Bus Stand and met the complainant. The appellant inquired as to why complainant had not come to Dahod. The complainant explained that he had some work so he could not come to Dahod. The appellant – accused then told to the complainant that if complainant intended to be permanent in his job, he had to pay Rs.100/- otherwise, his job would likely to be terminated. The complainant said to

the appellant that at that movement, he had no sufficient fund at hand, but he would go in the town and borrow Rs.100/- from some acquaintances. Thereupon, the appellant instructed the complainant that the complainant was required to put Rs.100/- in one envelope and that envelope was to be handed over to the appellant in the compound of District Panchayat Office at 12.30 p.m. He was specifically instructed that not to bring currency note of Rs.100/- openly but in an envelope which should be kept blank and nothing should be written on the said envelope. Thereafter, as it appears from the original prosecution case, the complainant visited Anti Corruption Bureau Office at Godhra where P.I. Shri Shri Dinkar Mangesh Rangdekar, P.W.6 was sitting alone. The complainant explained his complaint which was reduced to writing and signed by the complainant as well as P.I. Shri Dinkar Mangesh Rangdekar. In the meanwhile, PSI Shri Joshi resumed at Police Station and he was instructed to ascertain and call panchas. P.I. Shri Joshi called Panchas Shri Khumansinh

Madhavsinh Thakor, Panch No.2, P.W.5, from Mamlatdar Office and Shri Gammatsinh Chandubhai Thakor, Panch No.1, P.W.1 from the Prant Office of Godhra. As usual panchas were informed about the facts of the complaint and the complainant produced one currency note of Rs.100/- which was to be offered in bribe. An experiment of ultra violet lamp and anthracene powder were carried out by Sub-Inspector Shri Joshi and said muddamal note of Rs.100/- was smeared with anthracene powder and, thereafter, P.I. Shri Dinkar Mangesh Rangdekar took an envelope, the flap of which was opened and P.I. Shri Joshi put that currency note in the said envelope and the said envelope was then closed and put it in left hand shirt pocket of the complainant, after verifying that the said shirt pocket was empty. Thereafter, P.I. Shri Joshi destroyed blank paper which was used to smear with powder and washed his hands with soap. The anthracene powder bottle was secured in a cup-board and, thereafter in ultra violet lamp, the hands of all of them examined, but no marks of anthracene powder was found. The

complainant was instructed to accompany them till District Panchayat Office and from there with both the panchas on foot, he was to go in the compound of the District Panchayat Office and if, the appellant met him and demanded the amount of bribe, the complainant was to give that envelope put in his shirt pocket and except that, he was not to touch that envelope. Both the panchas were directed to remain with the complainant and to see what might take place and hear the conversation between the complainant and the appellant. First part of panchnama was prepared at 11.30 a.m. to 12.15 p.m. in this respect. Thereafter in official jeep, raiding party as well as panchas and the complainant went towards the District Panchayat Office. The complainant and the panchas entered in the compound of the said District Panchayat Office, while raiding party persons remained within the vicinity. At about 12.30 p.m. according to the prosecution case, the appellant came out of the room of the Education Committee and entering in compound, inquired from the complainant whether the

complainant had brought the amount. The complainant stated that he had brought the amount and then the appellant directed the complainant to go towards the canteen and started to go along with the complainant towards the southern portion where canteen was located. Both the panchas followed them. There appellant demanded the amount from the complainant and the complainant took out an envelope containing currency note of Rs.100/- of muddamal by his right hand and delivered to the appellant. The appellant accepted the said envelope with his right hand and put the same in his left shirt pocket. At that time panch No.1 indicated pre-arranged signal by putting his hands on his head. On receiving the single, raiding party in leadership of P.I. - Shri Dinkar Mangesh Rangdekar reached at the spot and Shri Dinkar Mangesh Rangdekar introduced himself to the appellant. The appellant, on inquiring, stated that he was Kalubhai Danabhai Patel, Bit Inspector of Taluka Panchayat Education Department, Dahod. Thereafter, upon instruction, Police Sub-

Inspector Shri Joshi in ultra violet lamp examined the hands of all, but no mark of anthracene powder were found upon any of the hands. Thereafter, upon direction from P.I. Shri Dinkar Mangesh Rangdekar, panch No.1 - Shri Gammatsinh Chandubhai Thakor took out white envelope from the left shirt pocket of the appellant and along with that envelope, there was one more paper and that paper was an application of teacher of village Jalad named as Natvarlal Lalubhai Modi and that application was dated 24th April, 1986 containing request to District Education Officer for his transfer. A recommendation was made by the appellant below such application. The said paper was seized and, thereafter panch No.1, upon instruction, opened an envelope found from the shirt pocket of the appellant. It was found that muddamal currency note of Rs.100/- was in the envelope which was taken out and examined in ultra violet lamp. Marks of anthracene powder on the said currency note were found and inside flap of the envelope such marks were visible. Those marks were rounded

by pen on envelope by P.I. Shri Dinkar Mangesh Rangdekar. The said note was again placed in envelope and was seized by the police. The appellant's shirt pocket etc. examined by ultra violet lamp, but no marks were found. The second part of panchnama of all these procedure was prepared in presence of panchas and was completed at 13.45 hours. Thereafter, the investigation was carried out after registering the offences by P.W.6 - Shri Dinkar Mangesh Rangdekar, P.I. and thereafter, P.W.7 – Shri Ramsinh Balusinh Chauhan, and Successor of Shri Rangdekar further investigated. A charge-sheet came to be filed against the present appellant in Special Court, Panchmahal at Godhra, for the charges levelled against him as aforesaid.

[4] On 26th October, 1993, vide Ex.6 a charge came to be framed against the appellant for the offences punishable under Section 5(1)(d) to r/w. Section 5(2) of the Prevention of Corruption Act, 1947 as well as under Section 161 of the Indian Penal Code. The charge contended that before 19th

February, 1986, the appellant demanded Rs.75/- from the complainant as bribe and accepted. On 19th February, 1986, for regularization the absence of complainant, the appellant demanded gratification of Rs.100/- from the complainant and accepted the same. On 4th March, 1986, when inspection was carried out of the school of the complainant at Gundikheda, the appellant demanded Rs.100/- for making good recommendation of the appellant and accepted Rs.85/- by way of bribe at S.T. Stand. On 1st May, 1986 again the appellant demanded Rs.100/- for making the complainant permanent in his job and accepted the same amount by way of gratification.

[5] The appellant pleaded not guilty to the above said charges and, therefore, the prosecution led the evidence to establish the case against the appellant.

[6] In the shape of oral evidence, the prosecution examined – P.W.1 Gammatsinh Chandulbhai Thakor, at Ex.11 as panch No.1, P.W.2

Jitendrakumar Nanalal Raval, at Ex.19, complainant, P.W.3 Balubhai Ratilal, Office Superintendent of District Panchayat Office, Godhra at Ex.29, P.W.4 Natvarlal Balubhai Modi at Ex.30 whose application was found from the pocket of the accused at the time of trap, P.W.5 Khumansinh Madhvsinh Thakor at Ex.31, panch No.2, P.W.6 Dinkar Mangesh Rangdekar at Ex.32 who carried the trap being P.I. of ACB Office at Godhra and P.W.7 Ramsinh Balusinh Chauhan at Ex.33, Investigating Officer, who submitted charge-sheet against the appellant.

[7] By way of documentary evidence, prosecution submitted on record FIR at Ex.21, leave report of the complainant dated 1st May, 1986 at Ex.12, Ex.13 is also leave report of the complainant for his absence from 14th February, 1986 to 17th February, 1986, at Ex.63 monthly diary of the performance of the appellant is produced, the sanction to prosecute the appellant is produced at Ex.16, panchnama prepared in presence of panchas by P.I. Shri Rangdekar is

produced at Ex.17, explanation of the complainant about his absence from the school from 14th February, 1986 to 18th February, 1986 is submitted at Ex.23, at Ex.25 a list of primary school of Dahod Taluka coming under the area of the appellant is produced. Vide Ex.26 and 27 when order passed by the Education Officer, Godhra for recruiting primary teacher is produced and a list of appointment of such teachers is also produced. At Ex.28 a report addressed by the appellant to the District Education Officer is produced by which, it is informed by him that the appellant was not present in the school from 14th February, 1986 to 17th February, 1986 till 18th February, 1986 without any leave. Inspection report for the inspection carried out by the appellant of the school of the complainant on 4th March, 1986 is produced at Ex.37 and at Ex.39 written statement of the accused is produced.

[8] This is a peculiar type of a case wherein before entering into the re-appreciation of the evidence and the contentions raised, it is utmost

necessary to look at the oral evidence recorded during trial.

[9] P.W.1 – Gammatsinh Chandubhai Thakor in his deposition at Ex.11 stated that at the time of trap, he was serving as a Clerk in SDM Office at Godhra. He was summoned by Prant Officer Shri Joshi on 1st May, 1986 and instructed to accompany with PSI Shri Joshi in panch. He had shown his willingness and, therefore, he went to ACB Office. Second panch was present in the ACB office. Panch No.2 was working in Mamlatdar Office at Godhra. The complainant was present and they were introduced with the complainant in the ACB Office. The complainant declared the facts of the complaint. He produced one currency note of Rs.100/- to be offered as bribe, the number of the note was noted in panchnama. First the note was examined about the powder marks, but in natural light or in light of ultra violet lamp, the marks were not visible. Thereafter, from the cupboard anthracene powder was taken out. He stated that he could not say that in what

container the powder contained. Thereafter, the said note was placed on one blank paper and was smeared with the powder and, thereafter, that not was placed in a blank envelope. The said envelope was placed in the pocket of the complainant in left pocket of the shirt. Before that it was ascertained that whether there was anything in the said pocket. Thereafter, the blank paper was destroyed by lighting fire. The anthracene powder bottle was restored in cupboard. Upon note the powder was smeared by PSI Shri Joshi and note was examined in the machine. Thereafter, Shri Joshi washed his hands and had informed that they had to go to District Panchayat Office. He stated that he and others decided to go to the District Panchayat Office in jeep. It was also decided that PSI Shri Joshi and Constable Shri Dilipsinh were to go to District Panchayat Office on scooter. In the said jeep, he himself, complainant, PI – Rangdekar and Khumansinh went to the District Panchayat Office. The procedure which took place at Police Station was noted in the panchnama. He stated that panchnama was shown

to him and in first part, he had signed and other pancha had also signed in that panchnama. He stated that thereafter all of them started to go to District Panchayat Office from ACB Office. They alighted from the jeep near Pathik Ashram. The witness stated that he, complainant, Constable Dilipsinh and panch No.2 got down from the jeep and entered in the District Panchayat Office. There was a neem tree near Vamanrao house and according to this witness, they stood under this tree. A meeting was going on in the said Vamanrao house. The complainant – Jitendrakumar, at that time, was standing near the said Committee Hall, Shri Kalubhai Danabhai Patel (appellant) came out of the meeting. He identified the accused – appellant in the Court as Shri Kalubhai Danabhai Patel. The witness further stated that thereafter, complainant and Shri Kalubhai Danabhai Patel both started to go towards the canteen and remaining all of them stood where they were. Thereafter, the complainant gave an envelope to Shri Kalubhai Danabhai Patel. Shri Kalubhai Danabhai Patel

took that envelope and put the same in his shirt pocket. The witness further stated that thereafter, as per the instruction from Shri Rangdekar, he had given a signal by putting his hands on his head, all of them reached there. Thereafter, in a shop situated in the compound, they set there which included complainant, both panchas, Shri Kalubhai Danabhai Patel etc. Thereafter, Shri Rangdekar instructed him to examine what had been in the bushirt pocket of Shri Kalubhai Danabhai Patel. Therefore, he examined the shirt pocket of Shri Kalubhai Danabhai Patel and from left shirt pocket, he took out an envelope. Along with that envelope, there was one paper. He identified the envelope before the Court, currency not of Rs.100/- and other paper which was seized with that envelope by the police. The witness further stated that on opening of that envelope, one currency note of Rs.100/- was drawn. The witness stated that panchnama was shown to him which was the same panchnama which borne his signature. The other panch also signed in his presence and he produced

the said panchnama at Ex.17. The witness further stated that an envelope was seized and the number of the said note were tailed with panchnama. He stated that he did not know whether the envelope was examined. He stated that at the time of raid, it was examined whether there were any marks on an envelope. He could not say whether the marks were made on envelope or not. The witness stated that opening of the envelope, there were marks. He stated that panchnama was drawn, currency note was seized, but he could not remember except that what was done. He submitted that he did not know whether Shri Rangdekar had done anything to Shri Kalubhai Danabhai Patel. The witness stated that one receipt had been given to the accused for seizing currency note and envelope. That seizure memo contained his signature. He produced that seizure memo at Ex.18. He stated that police recorded his statement.

In his examination-in-cross by the defence, he further stated that there was a door in District Panchayat Office and on both the

sides of the office, other buildings were situated. Entering the District Panchayat Office, a door was situated and opposite side of the door, there was a passage and from there one could go to the compound. He stated that he could not say the width of the compound. He stated that on the eastern side of the District Panchayat Office, other offices were situated. On right hand side, after entering into the said gate of the District Panchayat Office, office of Education Department was situated. He stated that he did not know that on each Monday and Thursday, the group meetings of officers and employees were arranged. He stated that he had no occasioned to visit District Panchayat Office on daily basis and, therefore, he could not say that daily in compound of District Panchayat Office at about 200 to 250 persons visit. He stated that at the time of trap, there were persons in the compound of District Panchayat Office, but how many persons were there, he could not say. He stated that there were about 50 persons. He stated that right from 1983, he had been working in SDM

Office. In their office, there was one big room and in the middle, inside one chamber was situated and on the other side, one office was situated, on left side after entering, there was one room wherein head clerk was sitting and other staff was sitting; likewise on right side also, the staff was sitting. In the back of the office of the head clerk, four persons used to sit, in second room, three persons used to sit and adjoining room, two persons used to sit. He stated that his office was situated 20 feet away from the office of the Mamlatdar and from these two offices, ACB Office was situated at a distance of 15 feet at the eastern side. He stated that in the compound of his office, jail was situated and on jail road, the canteen was situated. He denied that originally, he, PSI Shri Joshi, Khumansinh etc. used to get together in recess. The witness further stated that he was introduced with Shri Joshi on that day, before that he did not know Shri Joshi. He stated that when he entered in the chamber of his office boss, Shri Joshi was sitting there. When Shri

Joshi came to his office, he was sitting on his table. His table was situated at the side of Mahakali Temple and the window was abutting on that side. His boss summoned him through peon. When he went to his boss, PSI Shri Joshi told that he was to go in panch along with Shri Joshi. At that juncture of time, he was working on land department. At that time, one Shri P.M.Joshi was SDM. The witness further stated that he could not remember exactly what were the hours of the office. He stated that after he resumed his office at about 11.00, he was summoned by his boss. The witness stated that he had not asked that for what purpose he was required to go in panch. The witness further stated that six years before the incident, he knew panch No.2 – Khumansinh. He stated that he and Shri Khumansinh both belonged to Thakor community. He stated that he did not know that of which cast Dilipsinh belonged. He denied the suggestion that police constable, he had acquaintance from 1979. He stated that panchnama was written in the office by Shri Joshi and was dictated by Shri Rangdekar.

The chairs were put in the office and they were sitting there. The witness stated that after the currency note was smeared with the powder, the complainant stated that the said note was to be put in an envelope. They came to know about this fact first time at that juncture. He stated that he could not say with certainty whether the note was put in envelope after flap was opened. He stated that he could not say whether the currency note was placed in an envelope after folding the same. The envelope was closed by gum. The witness thereafter stated that in fact, he did not know whether the envelope was closed by gum. The witness further stated that from 11.15 a.m. to 12.00 p.m., they were in ACB Office. The witness stated that he could not say that he met with the accused at the gate of the Panchayat Office. He stated that when they entered in the compound of the District Panchayat, the complainant was with them. There were 50 persons in the compound at one side, there was one tree and there was one otala around trunk of the tree, that was situated opposite side of Vamanrao hall. He

stated that he could not say that an envelope was delivered to the appellant – accused stating that the same was census note. There was one consumer store in Panchayat Office and Shri Joshi was writing panchnama there. He denied the allegations that in fact, he did not witness anything, but at the instance of Dilipsinh, he was giving false evidence. He further stated that on the statement recorded by the police, he had subscribed his signature. He stated that he gave two statements to the police, one was recorded on the day of incident and the other thereafter. He stated that he could not say whether in both the statements, he subscribed his signature. In the office of consumer store, they stayed for half an hour. After the panchnama was over, they had been to their office. He could not say when thereafter Shri Kalubhai Danabhai Patel had gone. He stated that his statement was recorded on 3rd. He stated that he could not say that his statement was recorded in the evening in the ACB office on the day of the raid. He stated that on 3rd his statement was recorded in ACB office, but he

could not say when the same was recorded. He could not say who called him for the said statement. He could not say whether Dilipsinh had called him for recording of statement. He had informed his boss i.e. SDM that he was going for recording of the statement. He denied the suggestion that the accused neither demanded the bribe nor accepted the same. This all is the evidence of P.W. 1 – Gammatsinh Chandubhai Thakor, Pan No.1.

[10] P.W.2 – Jitendrakumar Nanalal Raval, complainant is examined at Ex.19. He deposed in his evidence that he belonged, originally, to village Choila, Taluka: Bayad, District: Sabarkantha. He was appointed as primary teacher at village Gundikheda, Taluka: Dahod, from January, 1986. He was required to appear in examination of Hindi. He stated that for that he was required to go to his native town and he obtained leave for that. He stated that on 15th February, 1986, he took leave for one day. He stated that he was required to forward the report

of leave to Group School. He was shown his report of leave which was at Mark 10/4 and he identified the same before the Court, which was admitted at Ex.20. The witness further stated that after obtaining leave, he went for Hindi examination. He further stated that thereafter, he could not return for two days. He stated that in the meanwhile, the appellant Shri Kalubhai Danabhai Patel visited his school. He deposed that the accused signed in his register and met with his landlord Shri Gomabhai. The witness further stated that his landlord Shri Gomabhai informed the accused that he (complainant) was out of station and was to return after two days. One attendance register was shown to the witness during his deposition which he identified to be register of his school belonged to 1986 which he produced at Ex.15. The witness further stated that when he returned from his native, his landlord had informed him that the accused had visited the school and had directed him (complainant) to see the accused. The witness further stated that the landlord paid Rs.75/- to

the accused on his behalf. The witness further stated that thereafter, he had gone to see Bit Inspector Kalubhai Danabhai Patel. The witness further deposed that on 19th February, 1986, he had seen the accused and requested the advise of the accused about his leave because his job was new. The witness stated that the accused said that he (complainant) was not required to do anything but to give Rs.100/- to the accused. The witness further stated that the accused demanded Rs.100/- and, therefore, he paid Rs.100/- to the accused. The witness further stated that in the month of March, the accused arranged annual inspection of the school and he visited the school of the complainant on 4th March, 1986. The witness further deposed that the accused inspected the school and threatened to the complainant that his work was improper. On threatened by the accused, he again inquired from the accused that what was required to be done by him. The witness deposed that the accused again demanded Rs.100/-. The witness further deposed that at that time, he had Rs.85/- which he paid

to the accused at the bus stand of village Gundikheda. The witness stated that at that time, the accused stated that the complainant was required to pay still further amount. The witness stated that thereafter, through his landlord accused conveyed to him that he (complainant) was to see the accused with full preparation. The witness stated that on that day, he could not see the accused on 30th April, 1986. The witness stated that on 27th March, 1986, he visited Gandhinagar and met the then Hon'ble Education Minister Shri Hasmukhbhai Patel. He represented by written application that he had to give money to the accused, frequently. The witness further stated that he was informed by the Hon'ble Minister Shri Hasmukhbhai Patel that if any occasion arose to pay, then he should pay the amount after consulting Anti Corruption Office at Godhra. The witness stated that on 1st may, 1986 in the early morning, he had been to Dahod and he inquired about the accused. The witness stated that he learnt that Bit Inspector – accused had gone towards Godhra. Therefore, he also went to

Godhra. The witness stated that in private vehicle, he went to Godhra. The witness further deposed that he inquired at Godhra Bus Stand and at about 10.45 p.m., accused met him there. The witness stated that at that place, the accused told the complainant that why on earlier day, the complainant did not meet him. The witness further stated that he replied that for his person reasons, he could not see the accused. The witness stated that thereafter, accused instructed him that the complainant to give Rs.100/-. The witness further stated that the amount of Rs.100/- was demanded by the accused for substituting the remarks and put good remarks. The witness further stated that if accused endorsed adverse remarks about him, he had to meet with difficulty in his job. The witness further stated that he replied to the accused that he would see the accused afterwards, and should manage the amount from his acquaintance from the town and would give the amount to the accused. Thereupon, the accused stated to the complainant that the amount of

Rs.100/- should be brought in closed envelope at 12.30 p.m. on that day and that envelope was to be delivered to him. The witness stated that the accused also instructed not to bring anybody with him. The witness further stated that the said amount was to be paid by the complainant to the accused in District Panchayat Office. The witness further stated that thereafter, he went to the Anti Corruption Office at Godhra. The witness stated that in Anti Corruption Office, P.I. Shri Rangdekar alone was sitting and he offered his complaint. The witness stated that while he was dictating his complaint, constable Shri Dilipsinh and PSI Shri Joshi both came in the office. The witness stated that Shri Rangdekar instructed both of them to go to Mamlatdar office and to bring panchas. The witness stated that his complaint was recorded by Shri Rangdekar and he signed below his complaint. During deposition, the complaint at Mark 10/1 was shown to the witness and on his identifying, the same was presented on record at Ex.20. The witness further stated that the persons who had

gone to bring panchas had brought panchas. The witness stated that when panchas came, Shri Rangdekar asked about Rs.100/- from him (complainant). The witness stated that in a panchnama, the numbers of the note were recorded. The witness stated that from the cupboard of the office, anthracene powder was taken out and utility of the powder was explained. The witness further stated that the powder was smeared on the note thereafter. The witness stated that thereafter, the powder could not be seen in the simple light, but could be seen in the light of ultra violet lamp. Thereafter, one envelope which was blank was opened by Shri Rangdekar and Shri Joshi put the said note in an envelope. The witness stated that thereafter, Shri Rangdekar put the said envelope in his pocket. The witness stated that the paper used for smearing the powder was taken out and was destroyed and burnt. The witness stated that thereafter, the powder was placed in the cupboard and the cupboard was locked. The witness stated that thereafter, PSI Shri Joshi washed his hands. The witness stated

that thereafter, he started to go for District Panchayat Office. The witness stated that PSI Shri Joshi washed his hands because the anthracene powder marks would not remain on fingers. In ultra violet lamp, the hands were examined and anthracene powder marks were not seen. The witness further stated that Shri Rangdekar directed him that if the accused demanded the money then and then only he had to pay the amount. The witness further stated that both the panchas were with him. The witness stated that Shri Rangdekar instructed panchas that if the amount was accepted by the accused, they were required to give signal by putting their hands on their heads. This instruction according to the witness was given to panch No.1. It was further instructed by Shri Rangdekar that panchas to hear conversation which might take place between the complainant and the accused. Thereafter, according to this witness, he himself, Shri Rangdekar, two panchas went towards the District Panchayat Office in Anti Corruption jeep vehicle and others followed on motor cycle.

The witness stated that near Pathik Ashram, he and panchas were alighted from the jeep and entered in the office of the District Panchayat. The witness further stated that the accused came from the opposite direction. The witness stated that at that time, he and other two panchas were near District Panchayat canteen and the accused came there and he asked him that he had brought the money. The witness further stated that thereafter, he took out an envelope from his pocket and offered to the accused, and thereupon, the panchas gave signal. The accused accepted an envelope and had put the same in his shirt pocket. On signal being received, raiding party came near the accused. Shri Rangdekar introduced himself to the accused as P.I. Anti Corruption branch. The witness stated that panch No.2 searched the pocket of the accused upon instruction of Shri Rangdekar. Panch No.2 took out an envelope and one application for transfer from the pocket of the accused. Inside of the envelope was examined in ultra violet lamp and anthracene powder marks were seen. Thereafter,

the number of the currency note were examined and tallied with the panchnama. Panchnama was drawn there and panchas signed the same. During his deposition, panchnama was shown to him which was identified by him at Ex.17. He was also shown muddamal envelope and the currency note of Rs.100/- which he identified. The witness, thereafter, produced on record at Ex.12 his report of leave for 1st May, 1986. He produced on record other leave report at Ex.13. The witness further stated that police recorded his statement. He stated that the said statement was recorded by PI Shri Rangdekar on 2nd May, 1986. He stated that after giving due receipt, inspection report and muster were taken from him. He stated that in all, three times his statement was recorded.

In his examination-in-cross, he stated that he resigned from his service from June, 1986. He stated that he was the sole teacher in the said village. He stated that in administrative work, he was required to receive

post and forward the same etc. He stated that in his school, there was no peon. He stated that on Indore Road, Gundikheda was situated at 25 k.m. away from Dahod. He submitted that village Himala was situated at one and half k.m. away from the village Gundikheda. He stated that his appointment was temporary and was stipendiary teacher. He stated that he was getting Rs.325/- by way of stipend till he was made permanent. He stated that stipendiary teacher was entitled to twelve casual leave per year. He stated that he applied for leave on 15th February, 1986. He denied the allegations that on 13th there was public holiday on account of Vasant Panchami and, therefore, he left the village on evening at 12th. He stated that on 14th in muster his signature was not found because he did not sign the muster on that day on account of his mistake. On 14th February, 1986, on the day of Annual Inspection, Shri Kalubhai Danabhai Patel recorded his statement. His statement was shown to him which was written in his hand writing.

He stated in his deposition further that in the said report, he had stated that he was not on duty from 14th February, 1986 to 18th February, 1986. The witness produced that report on record at Ex.23. The witness further stated that on 27th February, 1986, he was out of station on account of school work and, therefore, he was not present in the school. He stated that a visit book was kept in his school. He further stated in his deposition that visit book of his school was shown to him which he produced on record at Ex.26. He admitted in his deposition that in the said visit book, an endorsement was made that from 14th to 18th February, he remained absent without obtaining leave. He stated his ignorance about the fact that the endorsement made in visit book were originally required to be forwarded to Taluka Office in the end of respective month. He admitted that on 15th February, 1986, he had to appear in examination in Hindi. He denied the allegations that on leave report for 15th February, 1986, he did not enter outward number. He admitted that the said report had not been

entered in visit book and endorsement to that effect was made in visit book. He admitted that in his reply at Ex.23, he stated that he applied leave on 15th February, 1986, but the said report was not entered in visit book and no outward number was mentioned on that. He admitted that in the said report, the cause of leave was not shown by him. He further stated thereafter that he had shown reason to go to his native town. He further stated that Hindi examination continued for two days. He admitted that on the report at Ex.20, he endorsed the date of 14th January, 1986. The witness explained that instead of two, one was inadvertently written on that report. He admitted that his leave was not to be sanctioned by Bit Inspector. He further admitted that authority to sanction his leave was not with the accused. He further stated that Ex.12 report was addressed to Taluka Education Inspector. He denied the allegations that Head Master of the school had no authority to sanction the leave. He deposed that Ex.20 report had been submitted by him to his head master for arranging his charge. He admitted

that the said leave was not sanctioned. He stated that for 15th February, 1986, he applied before Taluka authority. He denied the allegations that on 15th February, 1986, he did not forward any report endorsing outward number on it. The witness further stated that he did not know that at each year census report of students was required to be prepared and was to be sent to the District through Bit Inspector. He denied the allegations that at the time of Annual Inspection, the accused orally instructed him to prepare census report in respect of how may students were eligible to be admitted in the school. He stated that on 4th March, 1986, when accused conducted inspection, he instructed in writing about the management of the school and this instruction had been written in visit book. He stated that such report was not with him. The witness further stated that when he resumed on 19th, he straightway went to village Himala where his landlord met him. He stated that his landlord's name was Gomabhai. He stated that Gomabhai informed him that on 18th accused had

come for inspection and he had to pay Rs.75/- to the accused. He stated that it had not happened that he had instructed Gomabhai to give Rs.75/- to the accused and upon that instruction, Gomabhai had paid that amount to the accused. He stated that it had not happened that the accused had demanded the amount from him and that he had instructed Gomabhai to pay the amount to the accused. The witness stated that the day on which he resumed, he had seen the accused in the evening for tendering leave report. He denied the suggestion that on that day, he was not required to meet the accused and in fact, had not met the accused. He admitted that on 14th, 16th, 17th and 18th, he was on leave unauthorisely. He stated that the proper management and regular management was to be inspected by Education Inspector. He denied the suggestion that from 14th February, 1986 till 4th March, 1986, the day on which inspection had been made, he had not met with the accused. He denied the suggestion that the explanation for his absence was offered first time by him on 4th March, 1986 and he had never

explained before that. He admitted that in visit book, there was an endorsement that he was required to explain his absence. The witness stated that before 4th March, 1986, in respect of leave, he tendered oral explanation and did not tender any written explanation. The witness stated that on 19th, when he resumed, he had seen visit book. He admitted that after seeing visit book, he felt that it was necessary to tender explanation. The witness further stated that he had not kept the office copy of the application which he tendered to Hon'ble Education Minister. The witness further stated that he had represented before Education Minister that the accused had been harassing him. The witness further stated that before resuming his service, he had been to Godhra for interview except that he had not gone to Godhra before. He visited Godhra first time, when he had given interview. From 27th October to 1st May, since the Godhra was on way, he had occasions to visit Godhra. He further stated that at Godhra his relatives were staying and he visited his relatives. He admitted

that the persons of Adarsh Radio were his acquaintance and he visited them at that shop. He stated that Adarsh Radio Shop was situated on Shahera Bhagol Road. He stated that till 1st May, it happened to visit once with person of Adarsh Radio. The witness further stated that on 1st May, 1986, he might have reached at Dahod at about 7.00 a.m., but he was not certain about the time. He stated that he reached Dahod through Himala. He denied the suggestion that it took one and half hour in bus for coming to Godhra from Himala, but he stated that it took 20 to 25 minutes. He stated that he did not know that for going to Dahod from Himala, the first bus was available from Himala at 7.00 a.m. He stated that he came to Godhra from Dahod in private vehicle. He stated that he came in one truck which was not loaded. He paid Rs.7/- as fare to truck driver. He stated that the landlord informed him that the accused had summoned him with full preparation and, therefore, he had been to Godhra with cash amount of Rs.150/-. He denied the suggestion that on 4th March, 1986 at the time of inspection, the

accused instructed him that he had made adverse report against him on 20th February, 1986. He denied the suggestion that therefore, he felt that he would be terminated from the job and, therefore, he met Minister for the education and made false grievance against the accused. He admitted that the harassment for his absence was legitimate. The witness further stated that coming to Godhra Bus Stand, he inquired about the location of ACB Office. He stated that to whom he had asked, he could not say, but that person indicated the way to reach to ACB Office. He stated that jail, Mamlatdar office and the office of the Deputy Collector and other offices are surrounded the ACB Office. He stated that ACB Office was situated in the lane of residential premises and was located in corner. He denied the suggestion that the ACB Office could not be found easily. He stated that from bus stand, he had walked upto the ACB Office. He stated that he reached at ACB Office at about 11.00 a.m. In 1986 bus stand was located near Lalbaug. He stated that before offering the complaint,

inquiry was made from him in ACB Office. He stated that the details of the complaint was asked before offering the complaint. He stated that this inquiry lasted for about ten minutes. Ten minutes also elapsed in writing of the complaint. He stated that when he reached at ACB Office, Shri Rangdekar, P.I. alone was sitting. On reaching there, he saw a name plate and he felt that person sitting was Shri Rangdekar. The inquiry was made by Shri Rangdekar at that time, no other person was present. At the time of writing of the complaint in between Shri Joshi was called. Police Constable Shri Dilipsinh was in ACB Office. Shri Joshi was called by beckoning him. Shri Joshi came after complaint was written as soon as the complaint was completed to be written, Shri Joshi came there. He denied the suggestion that after 27th March, 1986, he was in constant touch with the ACB Office. He admitted that on each first day of the month, a meeting was taking place of Area Inspector and that fact he knew very well. He denied the suggestion that the accused never met him at Godhra and never

demanded any amount. He denied the suggestion that after verifying that on 1st May, 1986, the accused was to visit in District for meeting and, thereafter, he offered complaint. He denied that Shri Joshi and Shri Dilipsinh both had gone to call two panchas, but only Shri Joshi had gone to call the panchas. He stated that he could not exactly say that whether Shri Rangdekar directed Shri Joshi and Shri Dilipsinh to call the panchas or not. He stated that both the panchas came together. He stated that after he reached at ACB Office and, thereafter, Shri Joshi reached at the ACB Office and fifteen minutes thereafter, Shri Joshi had gone to call panchas. After calling panchas procedure for raid was performed and that took about ten minutes. The second part of panchnama took about half an hour. It took one hour between he reached in ACB Office and first part of panchnama was completed. He stated that he did not know that in District Panchayat, a Meeting Hall named as Vamanrao Meeting Hall was situated. He stated that they did not wait on Otala of the hall where the meeting was being

conducted. He stated that when they entered in the gate of District Panchayat Office, he noticed Shri K.D. Patel. The witness stated that he was waiting for him. The witness stated that in the compound of District Panchayat in the centre the banyan tree was situated and around that tree one otala was situated. After entering in the gate of District Panchayat and after walking to 40 to 50 steps, this banyan tree was situated. The witness further stated that Shri K. D. Patel was waiting for him and met to them at the gate. He stated that he exactly could not say whether on that day in the compound of District Panchayat at about 100 to 150 persons were present. He stated that to his knowledge, there were some persons, but he could not say the numbers of those persons. He denied that it did not happen that meeting was completed and the accused had come out of the meeting. He denied the suggestion that after completing the meeting, the accused was going towards the canteen and he accompanied the accused. He denied the suggestion that on the pretext of census report, he delivered the

envelope containing currency note to the accused. He admitted that the envelope in which currency note was placed was not brought by him. The currency note was put in the envelope after folding the same. He demonstrated the folds of the note in the Court and stated that in that position the note was placed in envelope. He stated that as soon as he delivered the envelope to the accused, he immediately put the same in his pocket. The signal was demonstrated by panch No.1 and, therefore, raiding party rushed at the spot. He further stated that on receiving the signal, PSI Shri Joshi, PI Shri Rangdekar, panch No.2 and constable Shri Dilipsinh came running there. He stated that except the complaint, police recorded his three statements. He stated that his statements on 2nd May, 1986 and 30th November, 1986 were recorded. He stated that he signed those statements. He denied the suggestion that in his complaint or in his three statements, he did not state that "*on 4th March, 1996, accused visited my school and performed inspection and threatened that your management was not proper*

and accused threatened me". He denied the suggestion that the accused had never demanded firstly Rs.75/- then Rs.85/- and then Rs.100/- at any time. He denied the suggestion that the accused had not accepted any such bribe. He denied the suggestion that between 19th April, 1986 to 4th March, 1986, he did not meet the accused. He denied the suggestion that when he resumed his duty, he came to know that on 20th February, 1986, accused had made a report adversely against him and, therefore, he attempted to arrange that raid. He stated that District Education Officer did not ask his explanation for his absence from the school till the date of his deposition. He admitted that the report at Ex.13 was written by him. He stated that the said report was given to the Taluka Inspector of Dahod Shri Lalbhai Parmar. He admitted that there was an endorsement of Shri Lalbhai Parmar below such report. He admitted that on 3rd May, 1986, the amount salary for the period of his absence from his duty was deducted from the salary of fourth month. He stated that

the procedure for deducting pay started after he filed the complaint. He stated that he did not know that whether Shri Gomabhai had expired. He denied that he filed a false case against the accused because accused had filed adverse report against him. This is all the evidence of the complainant.

[11] P.W.3 Balubhai Ratilal is examined at Ex.29. He stated that in the month of May, 1986 he was serving as Office Superintendent in District Education Department in Primary Education Section. He was on duty on 1st May, 1986. He stated that on each first day of each month, a meeting was ordinarily arranged in District Panchayat. He stated that he could not say whether the accused Shri K.D.Patel was present in the meeting on that day. He stated that whoever remained present in the meeting had to sign and about that procedure was followed. He stated that his statement was recorded by Shri Rangdekar. He stated that most of District Panchayat had not been seen by him. He stated

that afterwards, he came to know about the incident of Shri K.D.Patel.

In the examination-in-cross, he stated that ordinarily he was not required to remain present in said meeting unless his Superior Officer had so instructed in advance. He stated that minute book of such meeting might be kept. He stated that ordinarily, on working day in the compound of District Panchayat Office at about 100 to 150 persons remained present.

[12] P.W.4 – Natvarlal Lallubhai Modi is examined at Ex.30. He stated that in the year 1986, he was serving as Assistant Teacher at village Jalat, Taluka: Dahod. He had preferred one application for transfer to the accused Shri K.D.Patel. He stated that he obtained remarks from Head Master Shri Laljibhai Parmar upon that application. He stated that he also obtained remarks of Principal and Area (Bit) Inspector upon that application. The said application was shown to him and he admitted that the said

application was signed by him. He stated that after obtaining the opinion of Principal since the accused was coming to attend the meeting at Godhra, he delivered that application to him to forward the same in the District.

In his cross-examination, the witness stated that in the month of March and April, ordinarily annual inspection of the school took place. The inspection which takes once in a year was called annual inspection. He stated that village Jalat was situated 4 to 5 k.m. away from Dahod. In District, there was no post for Principal, but senior teacher was considered to be Principal. He stated that in each village how many students were eligible to be admitted was to be ascertain and a list to that effect was prepared by them and, thereafter, they used to report that how many students were required to be admitted in the school in the month of June and July. He stated that he did not know that a census report was prepared in respect of how many students were to be admitted for arrangement of

grant. He stated that he did not know that such census report was prepared because it was necessary to decide how much grant was to be given to a respective school. He stated that except the application, which he preferred, no other application was preferred by him. He stated that he was in the school of Jalat, at that time and at the time of deposition as well on account of he being not transferred, he was serving in the school at village Jalat. This is all is the evidence of P.W.4 – Natvarlal Lallubhai Modi, Ex.30.

[13] P.W.5 – Khumansinh Madhavsinh Thakor is examined at Ex.31. He is panch No.2 of the panchnama and he stated that on 1st May, 1986, he was serving in Mamlatdar Office at Godhra. He was called in Mamlatdar Office at 11.00 a.m. There was one police officer with Mamlatdar and Mamlatdar had asked him to go with the said police officer. The said police officer asked him to wait and had been to take other panch and, thereafter, all of them had gone to ACB Office.

He stated that the other panch was from the Prant Office, Clerk Shri G.C.Thakar. He stated that Mamlatdar Office and Prant Office both are situated nearby. He stated that after other panch came, they had gone to ACB Office. He stated that when they had been to ACB Office, one person was sitting and he was introduced with them. His complaint was read over to them. He stated that the complaint was in respect of bribe of Rs.100/-. He stated that thereafter, panchnama was drawn and experiment were made. The note was shown in natural light but the note was unmarked. Thereafter, note was shown in the light of ultra violet lamp, but no marks were visible. Thereafter, on one paper powder was extracted and was smeared on both the sides of the said note. The said note, thereafter, was examined in natural light, but no marks were seen, but when the said note was examined in the light of ultra violet lamp, there were marked of anthracene powder on the note. Thereafter, the said note was placed on one blank envelope. He was shown the muddamal envelope and he identified the envelope

before the Court. The witness further stated that there the panchnama was completed and they were instructed to go at the District Panchayat. He stated that the said envelope was put in left hand shirt pocket of the complainant. Panch No.1 searched the complainant, but nothing was found from him and from his left side shirt pocket. He stated that the panchnama was prepared in ACB Office where the signature was obtained. He stated that thereafter, he himself, complainant, two panchas and other members of the staff boarded jeep vehicle. He stated that constable and Shri Joshi were on scooter. They went upto Pathik Ashram and alighted from the jeep. The witness further stated that he along with the complainant walked to the compound of District Panchayat. He further stated that near Meeting Hall situated adjoining Education Department in District Panchayat, Bit Inspector Shri Patel was standing. He further stated that Bit Inspector – accused came near the complainant. He stated that from three, both i.e. complainant and accused started going towards the District Panchayat

canteen. The conversation between them continued upto word “give”, thereafter, near canteen complainant took out one envelope from his left shirt pocket and offered to Inspector Shri Patel. He stated that in the meanwhile, police staff came running there and arrested the accused. He stated that thereafter, they all went to consumer store of the District Panchayat. At that time, panch No.1 was instructed to search the pocket of the accused. The witness stated that in the said search, from the pocket of the accused, one envelope and one application were found. During his deposition, an application was shown to witness, which he identified. The witness further stated that the said envelope was opened by panch No.1. The witness stated that from the envelope, one currency note of Rs.100/- was found. The number of the note tallied with the first part of the panchnama and, thereafter, there the statement of the accused was recorded. In the panchnama, his signature was taken. He was shown panchnama at Ex.17 and he stated that at both the parts of the panchnama, he had signed. He stated

that thereafter, police recorded his statement on 3rd May, 1986.

In his examination-in-cross, he stated that at the time of deposition, he was serving as Circle Officer at Gothada. In 1986, he was serving in Mamlatdar Office at Godhra and he was serving as such before one year. Before that he was not serving in Mamlatdar Office. He stated that at that time Dilipsinh with him and, therefore, he knew him. He stated that he did not know that Dilipsinh belonged to Thakar community, but he knew Dilipsinh by name. He further stated that so far as his memory went, PSI Shri Joshi had come to call him. He stated that he did not know whether Dilipsinh had come to call him. He stated that Mamlatdar Office, ACB Office etc. were situated in the same compound. He denied the suggestion that ACB staff and the witnesses were getting together in canteen during recess. He further stated that Shri Joshi was in chamber of Mamlatdar. He stated that one Shri S.P. Patel was the Mamlatdar at that time and he was called

through peon. He denied the suggestion that peon informed him that Shri Joshi had come and he had summoned him. He stated that Mamlatdar had said that this officer had some work and that he had to go with him. The witness stated that he did not ask that what was the purpose for taking him. He stated that when Mamlatdar had directed him then it was not necessary for him to know the purpose. He stated that he and panch No.2, both had been to ACB Office along with Shri Joshi. He stated that after him, Shri Joshi went for panch No.2 and during that period, he was sitting ideal and Shri Joshi came with the panch No.2. He stated that panch No.2 was Shri G.C.Thakar, who was working in Prant Office as clerk. He stated that he knew panch No.2 before the incident. He stated that both the panchas were taken together at ACB Office. He denied that it did not happen that he reached to ACB Office and, thereafter, Shri Joshi brought the other panch Gammatsinh and, thereafter, he was called from Mamlatdar office. It took 5 to 7 minutes in calling panch No.2 by Shri Joshi. He stated that there was no

conversation between him and Gammatsinh about why both of them were called. He denied the suggestion that at the instance of Dilipsinh, he had been to panchnama without asking the reason. He denied the suggestion that Shri Dilipsinh belongs to his caste and he was his friend. He stated that he did not know the accused Shri K. D. Patel before the incident. He stated that when they entered, the accused was standing out side of Education Committee building. On noticing the complainant, the accused came near the complainant. The accused came opposite side of Education Committee office, going ahead from education office building a banyan tree was situated. He stated that he did not know the distance. He stated that the meetings of District Panchayat were taking place in Vamanrao Hall because that was meeting hall. Whether meeting was still continued after the accused and complainant met, that he could not say. He denied the suggestion that the accused stated that “give” was not stated by him in panchnama or in his statement before the police. He admitted the

fact that the hands of the accused were not marked with anthracene powder. He denied the suggestion that the complainant delivered the envelope to the accused on the pretext that the same was census report. He stated that Gammatsinh was with him at that time. He stated that the said note after giving fold was put in an envelope. He denied that 2 to 4 folds were given to the note. He stated before the Court that the note was in the same position and it was the day of his deposition. He denied the suggestion that at the instance of the complainant and Dilipsinh, he was giving false evidence. This is all is the evidence of panch No.2.

[14] P.W.6 – Dinkar Mangesh Rangdekar, the captain of the teem, who conducted the raid is examined at Ex.32. He stated that in the year 1986, he was serving as Police Inspector, ACB at Godhra. On 1st May, 1986, Shri Jitendrakumar Nathalal Raval had come to ACB Police Station and offered his complaint against the Area Inspector Shri K. D. Patel for demanding bribe of Rs.100/-

for the purpose of making good remarks for the complainant. The witness stated that he reduced the complaint in writing as stated by the complainant which he produced at Ex.21. He identified his own signature as well as the signature of the complainant on complaint. The witness further stated that while he was recording the complaint, PSI Shri Joshi had come to the Police Station. He stated that he instructed PSI Shri Joshi to bring two panchas from Mamlatdar Office. He stated that Shri Joshi at about 11.15 a.m. brought the panch – Khumansinh who was Government employee. He stated that the second panch was not found and, therefore, he was sent to Prant Office for second panch. The witness further stated that Shri Joshi brought Gammatsinh at 11.25 a.m., as panch. The witness further stated that he introduced complainant to the panchas and panchas to the complainant. He stated that complainant read over his complaint to the panchas. The witness further stated that the complainant presented Rs.100/- for offering in bribe. The witness stated that

number of the said note was recorded in panchnama. He stated that thereafter, this note was handed over to Police Sub-Inspector Shri Joshi. He stated that PSI Shri Joshi explained the utility of anthracene powder and ultra violet lamp and he was instructed to execute experiment. The witness stated that thereafter, the said note was seen in natural light and thereafter, in the light of ultra violet lamp, but no marks could be visible on the said note. The witness further stated that thereafter, PSI Shri Joshi took out one blank paper and sufficient anthracene powder was extracted on that blank paper and was smeared on both the sides of the note of Rs.100/- with his fingers. The witness further stated that thereafter, PSI Shri Joshi examined the said note on which powder was smeared, blank paper and his hands in natural light, but no marks were visible, but in light of ultra violet lamp the marks were seen. Both the sides of note and on the fingers of the hands of PSI Shri Joshi as well as on blank paper anthracene powder marks were visible. The witness

stated that thereafter, he took out one envelope of white colour and he opened the flap of that envelope and he instructed PSI Shri Joshi to put the note of Rs.100/- in that envelope in which PSI Shri Joshi put. He further stated that thereafter, flap of envelope was closed and after folding the same, the envelope was put in left hand shirt pocket of the complainant. Before putting the envelope through panch No.1, search was made of left hand shirt pocket of the complainant, but the same was found empty. He further stated that thereafter, PSI Shri Joshi restored the bottle of anthracene powder in the cupboard and he locked that cupboard. The blank paper on which PSI Shri Joshi had taken anthracene powder was burnt and destroyed by PSI Shri Joshi. The witness further stated that PSI Shri Joshi washed his hands by soap. The witness further stated that PSI Shri Joshi examined his hands first in natural light and thereafter, in the light of ultra violet lamp, but no marks were found on the hands of PSI Shri Joshi. The witness further stated that thereafter, the hands

of the complainants, hands of both the panchas and hands of the all of members of the raiding party were examined firstly in natural light and, thereafter, in the light of ultra violet lamp, but no marks were found on the hands of anybody. The witness further stated that thereafter, he instructed the complainant that he along with both the panchas in Government jeep went to Pathik Ashram and from there along with both the panchas, complainant would walk till the office of the District Panchayat, Godhra. The witness stated that he further instructed complainant that if Shri K. D. Patel was available there then complainant should discuss about the report and in pursuance of the earlier demand, if the accused demanded the amount, in that case only the complainant to deliver the envelope containing the note of Rs.100/- to the accused and except that the complainant must not touch the said envelope. The witness further stated that he instructed both the panchas that they should accompany the complainant and to hear the talk which might take place between Shri K. D.

Patel and complainant to notice the exchange of the amount. They were further instructed that if Shri K. D. Patel accepted the bribe then panchas should remember where he put the said amount of bribe and panch No.1 to give signal moving his hands upon his head. The witness further stated that he instructed PSI Shri Joshi and police constable Shri Dilipsinh both of them to go to District Panchayat on motor cycle ahead and should remain there. They both were further instructed to hear conversation which might take place between the complainant and Shri K. D. Patel and notice the exchange of amount and if panch No.1 gave pre-arrange signal, they should involve themselves in raid. The witness further stated that a panchnama from 11.30 a.m. to 12.15 p.m., the first part of this procedure was drawn and signature of both the panchas were taken on that and he also signed that panchnama. He identified that panchnama to be that panchnama at Ex.17. The witness further stated that complainant and both panchas were made to sit in the jeep, while Shri Joshi and Shri Dilipsinh

started for going upto Pathik Ashram on motor cycle. The witness further stated that complainant and both panchas alighted from the jeep and had walked till the office of the District Panchayat. The witness further stated that they followed the complainant and panchas towards the office of the District Panchayat. The witness further stated that Shri K.D.Patel had come out from the office of Education Department and he made conversation with the complainant and had gone towards the canteen. The witness further stated that both the panchas followed them. The witness further stated that panch No.1 gave pre-arrange signal moving his hands over his head and, therefore, he himself and the members of the raiding party reached near the corner of the canteen. The witness further stated that he introduced himself to Shri K.D.Patel and asked the name and address of Shri K.D.Patel. The witness further stated that thereafter, he had inquired from both the panchas, what had taken place and he noted that in the panchnama. The witness further stated that thereafter, the hands

of the complainant, hands of both panchas and hands of the members of the raiding party were examined in natural light and thereafter, in the light of ultra violet lamp, but no marks were found on the hands of anybody. The witness further stated that thereafter, through panch No.1 envelope and one paper was taken out from left shirt pocket of Shri K.D.Patel. The witness further stated that on examining the paper, it was found that the same was the application of one Shri Natvarlal Modi for his transfer. He was shown the envelope containing currency note of Rs.100/- which he identified before the Court. The witness further stated that the said application was seized. The witness further stated that thereafter, the envelope was examined in natural light and thereafter, in the light of ultra violet lamp, but no marks were found of anthracene powder and outer part of the envelope. The witness further stated that thereafter that envelope was got opened by panch No.1 and currency note of Rs.100/- was extracted from that envelope. The witness further stated that the

number of the note of Rs.100/- was compared with the number written in the first part of the panchama and they were tallied. The witness further stated that this envelope was examined from its inner part and currency note of Rs.100/- was also examined in natural light, but no marks were seen, but in the light of ultra violet lamp on examination, it was found that inside of the envelope on the hands of panch No.1 and on the currency note of Rs.100/-, anthracene powder marks were visible. Those marks were rounded by ball pen on currency note of Rs.100/-. The witness further stated that the said currency note was again put in envelope and after obtaining signatures of both the panchas, the said envelope as well as that currency note were seized. He further stated that about this seizure, a receipt was prepared which was signed by the accused and placed on record at Ex.18 and was identified by the witness to be said receipt. The said receipt was also signed by both the panchas. The witness further stated that thereafter, the hands of the accused and his left

hand shirt pocket were examined in natural light and in the light of ultra violet lamp, but no marks were seen. The witness further stated that a detailed panchnama was prepared for this procedure and panchas signed that panchnama which was identified by the witness to be said panchnama at Ex.17. The witness further stated that thereafter, at 15.00 hours, crime came to be registered against the accused vide C.R.No.3/1986. Further statement of the complainant was recorded on 2nd May, 1986. He visited Himala and muster as well as inspection note were seized from the complainant and his statement was recorded. He identified Ex.14 to be that muster and Ex.15 to be inspection note. The witness further stated that thereafter, he recorded the statements of Incharge Head Master and landlord of the complainant. The witness further stated in para-3 that he also attempted to get the copy of an application preferred by the complainant to Hon'ble Education Minister for which the complainant preferred correspondence on 27th March, 1986, but the same could not be made

available to him. The witness further stated that thereafter, he entrusted and transferred the investigation to PI Shri Chauhan because, he was transferred from Godhra.

In his cross-examination, the witness denied the suggestion that before 1st May, 1986, he had met with the complainant. He denied the suggestion that from the end of the month of March, 1986, the complainant was in his constant touch. He stated that except the complaint, he recorded three further statements of the complainant. He stated that he recorded the statements of the complainant on 1st May, 1986, 2nd May, 1986 and on 13th August, 1986. He stated that he did not know whether a statement of the complainant was recorded on 30th November, 1986 also. He stated that Police Constable Shri Dilipsinh was with him. He stated that Shri Dilipsinh did not belong to Thakor community, but he was Vankar. The witness further stated in his cross-examination that it was not true that Dilipsinh and Joshi both together had gone to

call panchas. He stated that first panch – Khumansinh came, after Khumansinh, Shri Joshi had gone for to call second panch. He stated that he had sent Shri Joshi for calling panchas. He stated that it did not happen that Shri Joshi brought both the panchas together. He stated that from 1981 to 1987, he was serving as PI, ACB, Godhra. He stated that the anthracene powder was used to know that how and from whom the currency note travels. He stated that he knew, before experiments were executed, that the said note was to be placed in envelope. He stated that no powder was smeared on the envelope. He denied the suggestion that though there was no anthracene powder on the envelope, but on account of panchnama, the hands of the complainant and his pocket, hands of the accused and his pocket etc. were examined. He denied the suggestion that a routine panchnama which usually were executed in all cases, was executed in this case as well. He stated that the currency note of Rs.100/- was placed in envelope unfolded. He stated that he could not remember that whether the currency note

was put in envelope in the situation, which it was extracted from the envelope. At this juncture in evidence of this witness a note was made by the Court that the said currency note was folded four times. Thereafter the witness further stated that the upper flap of the envelope was closed, but no gum was applied. The witness further stated that the leave report of the complainant for 15th February, 1986 which was not seized by him. The witness made amendment and stated that he in fact had seized that report. He stated that the leave sanctioning authority was Inspector of Taluka Education Office. In para-7, the witness was confronted with the contradiction of panch No.2 and the witness stated that in statement of such witness before him, Khumansinh did not state word “give”. He admitted that complainant was appointed in the service from 10th January, 1986 and was serving as apprentice teacher. He denied the suggestion that the complainant filed false complaint against him and adverse report was made for remaining absence unauthorisely against the complainant. He denied the suggestion that the

accused did not demand any bribe nor accept any bribe. He denied the suggestion that panchas were in contact of his staff and getting together in staff canteen and, therefore, they were in their touch. This is all the evidence of P.W.6 Shri Rangdekar.

[15] The last witness P.W.7 – Ransinh Balusinh Chauhan, second Investigating Officer of this case, is examined at Ex.33 in general. He stated that from 1997, he was incharge of this Investigation and he recorded the statement of Gomabhai Rupabhai on 24th September, 1987. He recorded the statement of Shri K.D.Patel on 5th October, 1987. On 26th November, 1987, he recorded the statement of other witnesses. He initiated the step for obtaining sanction for prosecution against the accused and on 9th August, 1988, he received the said sanction and, therefore, he submitted charge-sheet and arrested the accused. He identified the accused in the Court. He submitted on record the papers at Ex.34 to 37 in respect of correspondence exchanged between ACB

Office and concerned office of Minister for Education in respect of the application filed by the complainant before the Hon'ble Education Minister.

In his cross-examination, in para-2 a contradiction in the statement of the complainant was proved and he admitted that the complainant did not state before him that on 4th March, 1986, the accused threatened him that his work was not proper. He denied the suggestion that he had submitted the charge-sheet falsely. This is all is the evidence of the prosecution.

[16] After evidence was over, the circumstances appearing against the accused were brought to his notice and statement was recorded of the accused under Section 313 of the Code of Criminal Procedure. In his further statement his stand about the prosecution evidence is of total denial. But in last question about if he wanted to explain about the prosecution case, he submitted his written statement vide Ex.39. In his written statement, the accused – appellant

stated that he made an adverse report on 20th February, 1986 against the complainant for his unauthorised absence from the school from 14th February, 1986 to 18th February, 1986. Along with the said report, he also attached one panchnama. He stated that to make the job permanent of the complainant, he was not the proper authority. He further mentioned in the explanation at Ex.39 that on 19th February, 1986, the complainant had not met him. He explained that before 4th March, 1986, when he conducted inspection, before that complainant had not met him at in time. On the day of inspection, he had orally instructed the complainant to forward the yadi of the students eligible to be admitted in the school on 15th June, 1986. He was also instructed that the said yadi and census report must be forwarded by the complainant to him so as to reach to him before the meeting of 1st May, 1986 because after the meeting of 1st May, 1986, the said work would be late for the next meeting of 1st June, 1986. The accused further explained in Ex.39 that on 1st May, 1986, the complainant met him first time in

the office of the District Panchayat and handed over an envelope and with the understanding that the envelope was the said census report. He had put that envelope in his shirt pocket and, thereafter, he was arrested. The accused further explained in Ex.39 that the complainant was a stipendiary teacher and on feeling that since the adverse report was preferred against him and that his job was in danger, he filed the complaint to take revenge and by misrepresentation, the said envelope was handed over to him. He further stated that he had not demanded any bribe nor accepted and he was innocent. This explanation is filed in the trial Court on 4th December, 1993.

[17] The learned trial Judge, thereafter, heard both the learned counsels for the parties and came to the above conclusion, against which this appeal is preferred by the appellant – accused.

[18] In the present appeal, learned advocate Mr.J.M.Panchal for the appellant in Criminal

Appeal No.33/1994 i.e. for original accused contended that there are certain admitted facts on record. He contended that there was enmity between the parties, that is established from the record that the complainant was absent from the school unauthorisedly and the appellant had made an adverse report in this respect. It is submitted that there is no dispute so far as this aspect is concerned, inimical terms between the parties is not in dispute and what was at a stake was the job of the complainant as he was likely to be terminated on that count. It is, therefore, submitted that the whole case of the prosecution is required to be viewed from this angle. It was contended that the backgrounds which are most important circumstances emerging, must be taken into consideration. The demands made for bribe by the appellant – accused and acceptance of the same on 19th February, 1986 is not established as the appellant was at some different village on inspection on that day. Further the demand and acceptance of bribe of Rs.75/- from Gomabhai, landlord of the complainant during inspection and

during surprise visit in a period when complainant was absent fails to hold the ground for the simple reason that the appellant had made report on 20th February, 1986 about the absence of the complainant and the question of accepting bribe, for unauthorisedly absent on the duty of the complainant, would not arise. Likewise, the demand made on 4th March, 1986, on the day of the inspection made by the appellant is also not believable, because the inspection report was prepared at that juncture and copy of the same was handed over to the complainant on the same day which is produced on record. Therefore, the question of demanding any bribe and acceptance of the same at the Bus Stand of village Gundikheda is far from truth. The report of inspection reveals factual position and not adverse. These three circumstances, according to the learned advocate for the appellant, is the part of prosecution case and for which the appellant is charged and these circumstances are not proved beyond reasonable doubt. Learned advocate for the appellant submitted that the next demand on 1st

May, 1986 is in pursuance of the earlier transactions and must be viewed as such. It was submitted that it was not within the powers of the appellant to make the job of the complainant permanent and for that the question of demanding bribe and accepting the same would not arise. It is, equally, an admitted fact that even the authority to sanction leave of the complainant was not with the appellant. In pursuance of the demand made on 1st May, 1986, it was submitted that in fact, after 4th March, 1986 and before that as well, there is no evidence on record that complainant met with the appellant. This is so because the story of the complainant in respect of his meeting with the appellant on 19th February, 1986 belies by various factors and, therefore, there is no reason for the appellant to call the complainant at Godhra or at Dahod just for making good remarks about his job and making him permanent and through landlord of the complainant whose name was Gomabhai and not examined by the prosecution. It was, therefore, submitted that the question of meeting of the

appellant and the complainant at Godhra Bus Stand must be scrutinized by the touchstone of probabilities. It was submitted that if the story of the complainant is again looked into in sequence, when according to the complainant, he had already paid the amount on 4th March, 1986 for the inspection report, there was no question to pay further amount. The time gap between 4th March, 1986 to 1st May, 1986 must be considered on touchstone of probabilities. The person who demands bribe for the purpose and that purpose is not within the powers of the appellant – accused. The conduct of the appellant – accused to reach at Godhra from Dahod on a particular day and to wait for the appellant appears to be improbable because that was not a pre-arranged meeting. The purpose for making fourth demand on 1st May, 1986 is also standing in doldrum of contradiction as on 4th March, 1986, the amount was demanded for good remarks, while on 1st May, 1986 the amount was demanded to make the job of the complainant permanent. Going through the deposition of the complainant, learned advocate for the appellant

commented at various places. The complainant attempted to establish falsity in respect of established facts irrespective of contradictions emerging from his deposition. In this view of the matter, it was contended that the meeting at Godhra and demand made by the appellant on 1st May, 1986 becomes doubtful and credibility of the complainant is shaken. It was submitted that earlier according to the complainant, the appellant accepted the amount openly. The learned advocate for the appellant submitted that it is not understood that why the appellant insisted to bring the amount in envelope. This is a doubtful circumstance. Furthermore, why the envelope was not treated with anthracene powder is a mystery could not be explained by the prosecution. Learned advocate for the appellant, therefore, submitted that neither for the demand made by the appellant at Bus Stand of Godhra nor in the compound of District Panchayat Office could be proved by the prosecution through the evidence of the complainant. Learned advocate for the appellant submitted that to this evidence of the

complainant, there is no corroboration at all from any other witnesses. Both the panchas examined, are not corroborating material part of the panchnama which deals with the demand made by the appellant of so called bribe amount in District Panchayat. It is submitted that panch No.1 is absolutely silent about what conversation took place between the appellant and the complainant in District Panchayat office and the prosecution failed to prove the panchnama through this panch. It is submitted that panchnama is not a substantive piece of evidence and the contents cannot be read in evidence unless those contents are got proved through the panchas. It is submitted that likewise, the second panch also failed to depose the conversation took place between the appellant and the complainant in the District Panchayat office. Panch No.2 only heard one word uttered by the appellant “give”, but this fact is not stated by this panchas, either in the panchnama or in his statement before the police. It is submitted that therefore so far demand and acceptance of bribe at District

Panchayat are concerned, both panchas are not useful to prosecution, as they failed to depose about the demand made by the appellant and acceptance of bribe by him. According to their evidence, they only saw a delivery of envelope by the complainant to the appellant. Likewise, it is also contended that the other important witness P.I. Shri Rangdekar is also not useful as neither he is an eye witness nor the witness of the fact of demand made by the appellant before laying of trap. He is only a witness of recovery and mere recovery, without proving knowledge of the accused having accepted bribe, the evidence of P.I. Shri Rangdekar also falls short in establishing the guilt. It is submitted that in these circumstances, it could not be said that the prosecution proved its case beyond reasonable doubt as the only evidence useful is available of the complainant on whom no reliance can be placed. It is submitted that in these circumstances, on preponderance of probability defence urged by the accused – appellant is acceptable. It is submitted that vide his written

statement, the accused stated before the trial Court on 4th March, 1986, when inspection was carried out, the complainant was asked to prepare a census report for the admission of students in June, 1986 and to report the same to him on or before 1st May, 1986. It is explained by the accused that this is so because from the numbers of the students to be admitted compulsorily in the primary school grant should be allotted accordingly which is a necessary procedure to be followed. The defence of the accused, therefore, is complainant delivered an envelope to him stating that the same contained census report and he accepted the said envelope to be so. It is submitted that prosecution case is not free from doubt on preponderance of probability. Therefore, this defence of the accused is required to be accepted. It was submitted that the learned trial Judge did not appreciate the circumstances of the case and simply relied upon what was deposed by the witness and without even weighing the credibility the conclusion of conviction was arrived at by the trial Court. It is submitted

that therefore, about the earlier transaction, the trial Court observed that those were not proved but the trial Court erred in coming to the conclusion that the fourth transaction for demand and acceptance of bribe was proved. It is submitted that therefore, the judgment and order impugned in this appeal is required to be set aside. The learned advocate for the appellant relied upon a decision of the Division Bench of this Court, in the matter of **(The) State of Gujarat Vs. Bhavjidan Chandidan**, as reported in **1984 GLH 572** for a contention that in criminal particularly in corruption case, the whole life of public servant depends on what the independent witnesses say in the Court. It is submitted that in this case, independent witnesses i.e. both the panchas failed to establish the demand. Likewise, a decision of this Court of Hon'ble Single Judge, in the matter of **Gopal Lal Ghisulal Chhipa & Ors. Vs. The State of Gujarat**, as reported in **1998 (1) GLH 943** relying upon para-9, it is contended that with the vital part of the prosecution case cannot be believed or not proved, conviction

cannot be based. The demand and acceptance are required to be proved without any doubt by the prosecution and if one of them is not proved being the vital part, the offence cannot be said to have been constituted and conviction cannot be sustained. It was submitted that the very vital part i.e. demand could not be proved by the prosecution in this case. It is, therefore, submitted that the appeal be allowed. It is further submitted that in this view of the matter, there is no substance in Criminal Appeal No.491/1994 which is filed by the State for enhancement of the sentence and the same is required to be dismissed.

[19] As against that learned APP Mr.S.S.Patel, supporting the conclusion as to the conviction of the appellant by the trial Court, submitted that there is nothing in the evidence of the complainant to disbelieve him. It is submitted that the fact must be considered that the complainant was harassed to the extent that he had to go to the Hon'ble Education Minister and

though the application which he preferred could not be traced out, but sufficient endeavor was made by the Investigating Agency in this respect and those documents are placed on record from Ex.34 to 36. There may be difference in expression of demand of bribe, but if the fact overall is proved by the prosecution, it could not be said that the prosecution case as to demand becomes doubtful, because on 4th March, 1986, the appellant made demand of amount in some expression and on 1st May, 1986 at Godhra in some different expression. What is material, is the demand of bribe for the smooth official relationship was made by the appellant, which is proved on record. The conduct of the complainant who is going upto the Hon'ble Education Minister discloses that he was harassed by the appellant by frequent demands. The difference in wording of demand as expressed by the complainant would not make difference nor some contradiction as has been brought about which would affect the material part of the prosecution case. It is submitted that the intention to obtain bribe on

the part of the appellant is proved to the substantial extent and the acceptance is proved by the independent panch witnesses who actually show the delivery of the envelope containing bribe amount between the complainant and the appellant. The version of the complainant for demand made by the appellant-accused on 1st May, 1986 at Bus Stand of Godhra and the version in this respect by the complainant could not be shaken in cross-examination. There is no reason to disbelieve the version of the complainant. It is submitted that it is an admitted position that in which the appellant had no dispute that on 1st May, 1986 in the District Panchayat Office, after 12.00 p.m., the appellant met the complainant and accepted an envelope. To this extent, the prosecution case is proved by admission, the same corroborates the version of the complainant that earlier at Godhra Bus Stand demand was made by the appellant. There was no reason for two independent panch witnesses to falsely depose before the Court about the delivery of that envelope. It was submitted that in these

circumstances, it was for the accused to lead further evidence to show that in fact, he accepted that envelope understanding that the same was a census report. It is submitted that there is no evidence at all on behalf the appellant – accused in this respect, except the bare say of the accused. So when it is established that the envelope was, in fact, containing bribe amount of Rs.100/- was accepted by the appellant-accused. It could be presumed that it was in pursuance of the demand made by the appellant-accused at Bus Stand of Godhra on the day of the trap, because this version of the complainant remains trustworthy and is not shaken. It was submitted that earlier, three demands and acceptance might not have been established by the prosecution, but that is not material. The demand of acceptance of the bribe amount on the day of the trap is established by the prosecution beyond reasonable doubt and hence since there is no evidence in support of the defence of the accused, the prosecution version is required to be accepted and conviction cannot

lightly be disturbed. It was submitted in Criminal Appeal No.491/1994 that in such type of cases, the imprisonment awarded by the trial Judge is barely insufficient and is required to be enhanced to the maximum limit as the cases of the corruption now rampant in the country and are required to be curbed. It is submitted that the learned trial Judge awarded sentences only for one year for each count and the fine of Rs.200/- and that too are made concurrently to run. Learned APP, therefore, urged that when punishment for the offence punishable under Section 5(1)(d) is provided to the extent of seven years and when punishment for the offence punishable under Section 161 is provided to the extent to a term of three years, suitable punishment of imprisonment be enhanced along with the amount of fine. It is, therefore, submitted that while dismissing Criminal Appeal No.33/1994, Criminal Appeal No.491/1994 be allowed and the sentences be enhanced for each of the offences proved against the accused-appellant.

[20] Having heard learned counsels in detail and having gone through the record of the case, what appears to this Court is that it is unfortunate that this Court is deprived of the advantage of the appreciation of the evidence by the trial Court. This Court feels that it is not necessary to drag sharpen sword of a criticism and to let loose the same upon the trial Court, but it cannot be helped expressing that no endeavor is made by the learned Judge to weigh and appreciate the evidence in proper perspective and in discharging of judicial duty. Demeanour and credibility of the witness can more be ascertained with exactness by the trial Court because it is privilege of the trial Court to notice and observe the witnesses to depose. It is, therefore, said that to judge the credibility and demeanour of the witnesses, the trial Court is the best Judge and, therefore, the law enjoins certain various serious duty upon the trial Court to deal with the evidence with judicial discipline. What is found from the record and from the judgment of the trial Court is nothing

but at initially mentioning of the authorities cited by both the parties and, thereafter, narrating the gist of the evidence of the witnesses and short foot note below the evidence that the witness was believable. Ultimately, in only one paragraph i.e. Para-25 the conclusion has been arrived at without assigning any reason, stating that there was no reason to discard the evidence of the witnesses. Conclusion is arrived at in this paragraph, in some lines without assigning reasons for believing or disbelieving the witnesses. The reasons are the heart beat and pulses of the judgment which unfolds judicial process of thinking which ultimately culminates into just decision. The appreciation of evidence in criminal trials by standard of a prudent person is a primary responsible of any Court. Unlike other system of administration of criminal justice system law enjoins on judiciary to shoulder greater responsibility to judge and to decide the questions of fact along with the question of law as we have not recognized jury system in criminal trials to arrive at the

conclusions in respect of facts involved. This is more serious a judicial duty to be performed. The Courts exist for doing justice to the persons who are before them. The Court is not merely to act as a tape recorder recording evidence and to say that what is recorded is believable. The crux of judicial duty is the object of getting at the truth in each trial on question of fact as well and a very active role is expected from the trial Courts for which there is not only ample scope but sufficient powers are also conferred under the Code. The Courts have greater responsibilities when the role of prosecution itself appears not performed properly. In arriving at just conclusion, it is duty of the prosecutor to bring all the facts and material on record and it is as much the duty of the Court to ensure that the whole material is brought on record. This is with reference to the evidence recorded of the two panchas.

[21] With acceptance of primary cardinal principle of criminal justice that the accused presumed to be innocent unless such a presumption

is rebutted by the prosecution, it becomes bounden duty of the Courts and prosecutors, firstly, to endeavor to bring all the material and to assess the same by the Court dispassionately as to avoid miscarriage of justice. Accepting of the evidence and reasons for accepting or discarding the evidence must be so obvious in the judgment as to ascertain how the fact in issue and the issues of the law are dealt with by the trial Court. In fact, duty is cast upon the Courts to examine merits and demerits of the case and this duty is not discharged by simply saying what is recorded as a prosecution evidence is believed because there was no reason to disbelieve the same.

[22] Be that as it may as no useful purpose would serve in futile exercise to explore that reasons are assigned or not assigned by the trial Court for the conclusions particularly in this case because no reasons whatsoever are found from the judgment and order impugned and more so being a first Appellate Court, it becomes the duty of

this Court as well to weigh and re-appreciate the evidence like trial and come to the independent conclusion and, therefore, this Court has undertaken a complete and comprehensive appreciation of vital feature of the case and the entire evidence on record is scanned thoroughly with reference to the broad and reasonable probabilities of the case. The contentions raised by both the sides in detail are also taken into consideration. Therefore, it was absolutely necessary to depict the evidence of witness in this judgment verbatim so far as possible.

[23] Having appreciated the evidence of prosecution in its totality, pivotal on the part of the prosecution case and epicenter remains within the compass of the fact that the complainant being primary teacher and the appellant being his Area (Bit) Inspector, there was official relationship between them and for doing favour, the appellant demanded bribe amount from the complainant four times and out of them, three times complainant paid of the bribe and on

fourth time, he made grievance before the authorities of Anti Corruption Bureau and according to the prosecution case, fourth time the accused-appellant was caught red handed, while accepting the bribe from the complainant.

[24] The first three occasions of passing of bribe amount from one hand to the other, though cannot be separated from the integral part of the prosecution case. At the same time, it cannot be said that since earlier three demands and acceptance of bribe becomes doubtful, the fourth occasion also becomes doubtful. If any of the four occasions is proved beyond reasonable doubt by the prosecution, the appellant must be held guilty for accepting gratification. Even then, each occasion is integral part of the prosecution and will have to be examined on its own merits. More over, the credibility of the complainant with reference to all four occasions has to be judged in connection with each other and then if doing so, if any of the occasion proved beyond reasonable doubt as aforesaid, the appellant

safely be held guilty for accepting illegal gratification.

[25] It would be in the fitness of things, therefore, first to examine the occasion and the events which took place on 1st May, 1986 and, thereafter, to examine earlier occasions with reference to the credibility of the complainant. Further only once complainant made grievance before the Anti Corruption Bureau i.e. on 1st May, 1986 and trap was arranged and, therefore, this incident is required to be judged and appreciated with the evidence available on record first above all.

[26] The prosecution case and the evidence recorded in this respect is in detail mentioned hereinabove. What transpired on 1st May, 1986 could be ascertained from the evidence of four witnesses and by some documentary evidence. Those witnesses are P.W.1 Gammatsinh Chandulbhai Thakor, at Ex.11 as panch No.1, P.W.2

Jitendrakumar Nanalal Raval, at Ex.19, complainant, P.W.5 Khumansinh Madhvsinh Thakor at Ex.31, panch No.2, P.W.6 Dinkar Mangesh Rangdekar at Ex.32, who acted as leader of laying trap being Police Inspector of Anti Corruption Bureau, Godhra. Now with this evidence, admitted facts of the prosecution case must be taken into consideration. The part of the prosecution case that an envelope was handed over by the complainant to the appellant at about 11.30 a.m. to 12.00 p.m. in the compound of the office of the District Panchayat is established by even the statement of the accused. To this extent, even accused-appellant has no dispute, but the case of the accused-appellant in this respect is, he accepted that envelope understanding that the said envelope contained census report as desired and called by him from the complainant, while the prosecution case is in pursuance of the demand made by the accused on the Bus Stand at Godhra on the same day from the complainant, the accused demanded and accepted bribe of Rs.100/- which was kept in the envelope as per his direction. In

this perspective now to find out the truth in this respect that is for the incident of laying of trap occurred on 1st May, 1986, the evidence of those four witnesses will have to be examined and appreciated. It is an endeavor of this Court to ascertain the performance of each of the four witnesses that how far the fact of accepting and demanding of bribe by the appellant is established as per the demand made by him from the complainant at the Bus Stand of Godhra earlier on that day.

[27] Now coming to three witnesses i.e. two panchas and Investigating Officer Shri Rangdekar, their role appears in the prosecution case, from the stage the complainant approached ACB Office. Suffice it to say that first part of panchnama by which complaint came to be recorded and the complainant produced currency note of Rs.100/- and kept in an envelope after treating note with anthracene powder is concerned, the evidence is acceptable as these three witnesses have established this fact. It must be noted that

fact of the prosecution case, to place the currency note in an envelope as per the direction of the accused and the fact of earlier three demands made by the accused is the factor of the prosecution case rests exclusively within the knowledge of the complaint and these facts were derived by the panchas and PI Shri Rangdekar from the complainant. Credibility and trustworthiness of this part of the prosecution case can be ascertained, when the evidence of complainant is discussed. The endeavor of this Court is, therefore, first to ascertain that what is proved by the prosecution through independent witnesses i.e. two panchas and by PI Shri Rangdekar must be appreciated first. It clearly transpires from the evidence of P.W.1 Gammatsinh Chandulbhai Thakor, at Ex.11 as panch No.1, P.W.5 Khumansinh Madhvsinh Thakor at Ex.31, panch No.2, and P.W.6 Dinkar Mangesh Rangdekar at Ex.32, that the complainant offered his complaint and as per the first part of the panchnama as stated earlier all of them in two vehicles reached near the District Panchayat Office. Very important part of the

prosecution case is what transpired there and what is proved by the evidence of two panchas and PI Shri Rangdekar as to how the events took place. This is very material in the facts and circumstances of this case that delivery of currency note is concealed in an envelope and complainant delivered envelope to the accused which the accused has admitted that he had accepted the said envelope. Necessary it is, therefore, to see the evidence of P.W.1 in this regard. In para-2, P.W.1 Gammatsinh Chandulbhai Thakor, at Ex.11 as panch No.1 stated that when they reached in District Panchayat Office, accused-appellant came out and both complainant and accused walked towards the canteen and both the panchas were present where complainant and accused met. Then complainant gave one envelope to Shri K. D. Patel and Shri K. D. Patel placed that envelope in his shirt pocket and thereupon he gave signal. Beyond this panch No.1, neither supported the prosecution case as disclosed in the panchnama nor there is endeavor on the part of the prosecutor to prove the panchnama through

a panch witness by reading over the panchnama to the witness. Admittedly, in the evidence, P.W.1 Gammatsinh Chandulbhai Thakor, at Ex.11 as panch No.1 is not supporting that case of the prosecution that on seeing the complainant in the compound, the accused asked him whether the complainant had brought the amount and getting positive reply from the complainant, both of them started going towards the canteen and near canteen again the accused demanded the amount and the complainant handed over the envelope. Unfortunately, this case cannot be brought on record through panch witnesses. Panchnama cannot be read as a substantive evidence, but we only can appreciate the evidence of panchas as recorded before the Court. So far as panch No.1 is concerned, what is disclosed is that the accused came out of the meeting and the complainant and accused walked towards the canteen and near the canteen one envelope delivered by the complainant to the accused. Nothing is coming on record through panch No.1 that whether any conversation took place between

the complainant and accused. It is only found that panchnama was shown to the witness and he deposed before the trial Court that he had signed that panchnama, but contents were never read over to the witnesses. As aforesaid, it is pertinent to note here that what transpire in District Panchayat Office, is disclosed by the prosecution in panchnama Ex.17. It is also established law that panchnama is not substantive piece of evidence and the substantive evidence are the panchas, the contents of panchnama, therefore, can be read only to corroborate the evidence of panchas and the contents of the panchnama cannot be read as substantive piece of evidence. It is an established practice that memory of panchas be refreshed by reading the panchnama when panch steps in witness and to ask him whether the same was done in his presence. This is the manner in which the panchnama can be proved. In this case what is done, is panchnama only shown to the witness and he states that he had signed those pachnama. In the present case, the panchas do not state, what is stated in panchnama Ex.17. This is

so because panchnama could not be read to the witness. Necessary it is to refer to the observation made by the Division Bench of this Court in a decision, in the matter of **Mer Vaja Meraman Vs. State of Gujarat** as reported in **1988 (2)GLR 1057** wherein this Court observed, as under, in para-14.

> “**14.**Before parting with this case, we are constrained to observe here that the evidence of the Panch Kala Karsan, P.W.15, Ex.39 is recorded in a very slip-shod manner. Same is the case with regard to the recording of the evidence of the Investigating Officer so far as the recovery of the rope is concerned. The learned Public Prosecutor who conducted the prosecution before the trial Court did not take pains to bring on record in the substantive evidence of these two witnesses the fact of the accused having made a statement that he had kept the

piece of rope and he was inclined to show that spot, even though it has been recorded in the Panchnama, Ex.40 that the accused made such a statement. The learned Public Prosecutor does not appear to have realised that there should be substantive evidence on record in this regard and that the Panchnama can be used only to corroborate the evidence of the Panch and not as a substantive piece of evidence. It appears that the Panchnama can be used only to corroborate the evidence of the Panch and not as a substantive piece of evidence. It appears that the Panchnama, Ex.40, was shown to the Panch and he admitted his signature and, therefore, it was exhibited at Ex.40. The examination in chief of this witness Kala Karan does not show that he was read over the Panchnama before it was exhibited. This Court has time and again impressed upon the necessity of reading over the Panchnama which can be used as a

piece of corroborative evidence. In spite of this, it is regrettable that the learned trial Judge did not take pains to see that the Panchnama was read over to the Panch before it was exhibited. A Panchnama which can be used only to corroborate the Panch has to be read over to the Panch and only thereafter it can be exhibited. If the Panch has omitted to state something which is found in the Panchnama, then after reading over the Panchnama the Panch has to be asked whether that portion of the Panchnama is correct or not and whatever reply he gives has to be recorded. If he replies in affirmative, then only that portion of the Panch can be read to corroborate the substantive evidence of the Panch. If he replies in negative, then that part of the Panchnama cannot be read in evidence for want of substantive evidence on record. It is, therefore, necessary that care is taken by the Public Prosecutor

who conducts the trial to see that such a procedure is followed while examining the Panch as a witness. It is also necessary that the learned trial Judge also sees that Panchnama is read over to the Panch and thereafter the Panchnama is exhibited after following the procedure as indicated above. If the learned Public Prosecutor and the learned trial Judge had followed this procedure in the present case, and if the Panch had stated that the accused-appellant had made such a statement as recorded in the Panchnama, then it would have been possible to convict the accused-appellant at least for the offence punishable under Sec.201 I.P.C. It is unfortunate that the case results in acquittal because of want of care on the part of the learned Public Prosecutor as well as the learned Additional Sessions Judge."

Though this panchnama belongs to recovery and discovery of incriminating articles, but

whatever is made in panchnama by the prosecution is required to be proved in above manner for the said reason that panchnama is not substantive piece of evidence, but it is the evidence of panchas which is substantive.

[28] Likewise, panch No.2 is, as well, in his deposition at Ex.31 in respect of what transpired in the compound of the office of the District Panchayat stated in para-1 that when they reached in District Panchayat Office, the accused was standing near the building of Education Office which is adjoining to the Meeting Hall and he came near the complainant. From there, both of them started walking towards the canteen and in conversation, this witness only heard a word “give” and nothing beyond that. This witness further stated that near canteen, complainant took out one envelope which was accepted by the accused. It must be noted here that the contradiction about having heard “give” by this witness is proved. When he stated in his chief that he heard the word “give”, it is proved that he did not state this, either in the panchnama or

in the statement as recorded of this witness by the police. Therefore, the position emerges that from careful examination of these two independent witnesses, what is proved by the prosecution is that the accused and complainant from meeting hall walked to the canteen and near the canteen one envelope was handed over by the complainant to the accused. Except that none of these two witnesses deposed about what conversation took place between the complainant and accused in respect of this transaction. Again no attempts were made by the prosecution to read over the panchnama to these witnesses and to ascertain as to whether the said panchnama was in fact drawn in presence of these two independent panchas and according to the events occurred. When substantive evidence of this panch witnesses is appreciated, what is proved by this evidence is only that a delivery of one envelope by the complainant to the accused without accompanying a demand from the accused, while the third witness PI Shri Rangdekar is a witness of recovery. He is not a witness of what transpired between the

complainant and the accused in the compound of District Panchayat Office, but he reached at the spot after signal given by panch No.2. So except the complainant, by the evidence of these three witnesses, what is established is a mere delivery and recovery of envelope containing a currency note of Rs.100/- treated with anthracene powder and recovery of the same from the pocket of the accused and this fact, is admitted by the accused that he did accept that envelope with the understanding that the same was census report. Even in the evidence of PI Shri Rangdekar, P.W.6, no attempt is made to prove the panchnama as per the legal procedure. In his evidence also, what we find this much that “a detail panchnama was drawn of this procedure and signatures of panchas were taken on that panchnama which is produced at Ex.17.” Except this deposition, in para-2 of this witness, panchnama was not read over to him to prove the contents of the panchnama. The position emerges that contents of the panchnama could not be proved, either by the panchas or by Investigating Officer Shri Rangdekar and what is

stated by panchas in their deposition is not supporting the statements made in panchnama as to conversation taken place between the accused and complainant at the actual delivery of the bribe amount. At the most, delivery of envelope is established and nothing more. It must be noted that neither of the panchas are treated as hostile. It must also be noted here that no fault could be found of the panchas or to discredit them as it was the duty of the prosecution to refresh the memory of each of the two panchas, but this is not done and facts remain that so far as P.W.1, P.W.5 and P.W.6 are concerned, from their evidence what is established is the delivery of an envelope. Now the question, therefore, arise as to whether the acceptance of that envelope by the accused was with the knowledge that the envelope contained the amount of bribe as demanded by him earlier, particularly because it is the case of the defence that the accused accepted the envelope understanding that the same was census report as called for by him from the complainant. In other words, the duty

lies on the prosecution to prove *mens rea* and guilty intention on the part of the accused. In bribe cases the culpable act or conduct of the accused must be proved to have been done with mens rea. Therefore, it is the duty of the prosecution that it must be proved that there was guilty mind behind the culpable act complained of. In the matter of **R. Balakrishna Pillai Vs. State of Kerala**, as reported in **(2003) 9 SCC 700**, the Apex Court observed in paras 43, 44 and 45 as under:

> **43.** To consider yet another aspect, the general principle of criminal jurisprudence is that element of mens rea and intention must accompany the culpable act or conduct of the accused. In respect of this mental element generally, the Blackstone's Criminal Practice describes it as under :
>
> > "In addition to proving that the accused satisfied the definition of

> the actus reus of the particular crime charged, the prosecution must also prove mens rea i.e. that the accused had the necessary mental state or degree of fault at the relevant time. Lord Hailsham of St. Marylebone said in Director of Public Prosecutions v. Morgan (1976) AC 182 at p. 213. The beginning of wisdom in all the "mens rea" cases ... is as was pointed out by Stephen J. in Tolson, QBD at p. 185, that 'mens rea' means a number of quite different things in relation to different crimes'. Thus one must turn to the definition of particular crimes to ascertain the precise mens rea required for specific offences."

The author then comments:

> "Criminal offences vary in that some may require intention as the mens rea, some require only recklessness

> or some other state of mind and some are even satisfied by negligence. The variety in fact goes considerably further than this in that not only do different offences make use of different types of mental element, but also they utilise those elements in different ways."

It is clear thus that the accused must have the mental state or degree of fault at the relevant time. It may of course differ from crime to crime according to the definition thereof. The matter of degrees may also differ. That is to say generally the mental state and the criminal act must coincide. The criminal act may be one which may be intended by the wrongdoer. It is as well known mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the

accused. As indicated earlier, situation varies in respect of different kind of crimes as in some of them even negligence or careless act may constitute an offence or there may be cases of presumptions and putting the accused to proof to the contrary. In the case in hand we have found that there is no sale of energy to M/s. GIL by KSEB nor had the appellants any say in price fixation for M/s. GIL by KEB. In this light we may pass on to Criminal law - J. C. Smith, Brian Hogan: *Criminal Law*, where proposition of law is put as follows :

> "It is a general principle of criminal law that a person may be convicted of a crime unless the prosecution have proved beyond reasonable doubt both (a) that he caused a certain event or that responsibility is to be attributed to him for the existence of a

certain state of affairs, which is forbidden by criminal law, and (b) that he had a defined state of mind in relation to the causing of the event or the existence of the state of affairs. The event, or state of affairs, is called the actus reus and the state of mind the mens rea of the crime."

44. We further find the said principle of criminal jurisprudence stated in Criminal Law by K. D. Gaur, wherein it is stated as follows :

"Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it

must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime a physical element and a mental element, usually called actus reus and mens rea respectively."

45. Glanville Williams in Criminal Law has also stated as follows in connection with the intention accompanying the act :

"The chief problems in the general part of criminal law pertain to the requirement of a criminal state of mind, mens rea; but these cannot be adequately discussed without a preliminary exploration of the nature of an actus reus."

It is further stated :

"Although thoughts are free, the

uttering of them is another matter. Speaking or writing is an act, and is capable of being treason, sedition, conspiracy or incitement; indeed, almost any crime can be committed by mere words, for it may be committed by the accused ordering an innocent agent (e.g., a child under eight) to do the act. But to constitute a criminal act there must be (as said already) something more than a mere mental resolution. Apparent, but not real, exceptions to this proposition are treason and conspiracy. It is treason to compass the King's death, but the law requires an overt act manifesting the intention; and this act must be something more than a confession of the intention. It must be an act intended to further the intention; perhaps, too, it must actually do so...."

[29] Thus from the evidence of P.W.1, P.W.5 and P.W.6 what is proved as aforesaid is delivery of envelope containing muddamal currency note of Rs.100/- and nothing beyond that, for the reasons stated above. Now, therefore, as aforesaid, prosecution has to prove that for delivery of an envelope was with culpable mind on the part of the accused. The culpable mind of the accused cannot be ascertained from the evidence of these three witnesses, even if the evidence on record is taken as it is of these three witnesses, the culpable state of mind of the accused of having accepted the envelope by way of gratification is not proved. Nothing is coming out from these witnesses as to even infer that accused accepted the envelope with full knowledge that it contained Rs.100/- demanded by him from the complainant by way of bribe. This is so because prosecution failed to prove beyond doubt that what actually took place between accused and complainant in District Panchayat Office compound except delivery of envelope and this evidence intrinsically fails to prove mens rea on the part

of the accused. Eventhough, as per the original prosecution case, the conversation took place between the accused and the complainant could not be proved by the prosecution through these three witnesses then remains the evidence of the complainant, P.W.2 – Jitendrakumar which requires through scrutiny to ascertain as to whether the acceptance of envelope by the accused was part of transaction of receiving gratification by accused. Even then if, it is proved through the evidence of complainant that the accused demanded the bribe to favour the complainant and when delivery is proved and even though conversation took in the District Panchayat Office is not proved by the independent witnesses i.e. Panchas, the case of prosecution may inspire confidence. Therefore, while appreciating the evidence as aforesaid, this Court reaches to the juncture where it clearly appears that the case hinges upon the say and deposition of the complainant P.W.2 – Jitendrakumar Raval. In such peculiar circumstances, it becomes the duty of the Court

to consciously scan the evidence of a particular witness and to ascertain that on a touchstone of probability the say of such witness fits into whole scenario of the prosecution case. Needless it is to observe that each case rests on peculiar facts of that particular case. It must also be noted that in criminal trials, the facts of one case may be nearly similar cannot be precedent for other case. Thus, in each case, the evidence of each witness will have to be examined from the view point of his creditworthiness, truthfulness and intrinsic worth of the say of the witness. This particular case, now depends upon the deposition and the credibility of the evidence of the complainant. Therefore, threadbare scrutiny of the evidence of the complainant, P.W.2 is now warranted to come to the conclusion that the evidence of complainant is credible and inspires confidence. It must be noted that delivery of envelope is established by the panch witness and admitted by the defence may corroborate the evidence of the complainant, if the evidence of the complainant is found having ring of truth.

Eventhough the panchas have not fully supported the case of the prosecution as disclosed by panchnama.

[30] Now the credibility of witnesses is a matter not regulated by rules of procedure. The power to speak truth by any witness depends upon his knowledge, is power of expression and his will to speak truth. Regard for the truth emanating from inner conscious of a witness is a matter to be discerned by the Courts which might be depending upon various circumstances. Naturally, credibility of witness has to be decided by referring to his evidence as a whole and from the fact that how the witness fared in cross-examination. To decide the credibility of a witness impression created by him before the Court by his evidence in other context i.e. other facts of the case is also important. The endeavor should be to find out, as to whether the statements of witnesses are wholly improbable; whether the deposition contains mutually contradictory or inconsistent version; whether

there is bitter enmity in the mind of a witness from the opposite side and what is demeanour of the witness, while deposing before the Court. These are the important guidelines to decide the credibility of the witnesses. Above all integrity, ability and consistency of a witness and conformity of his say with other circumstances appearing in the case is very essential to place reliance upon the witness to conclude that the particular witness is a truthful witness. At the same time, if it is found that a witness has made deliberately false statement in his deposition, which are utterly unreliable then there cannot be any guarantee of the truth of the statement made by such witness. It must not also loss sight that to test the veracity of a witness examined in cross is not only available method. But the veracity is required to be judged from overall circumstances of a given case and this is purely a question of fact. There cannot be straitjacket formula and what is available as per the law to a Court must be taken in aid to assess the credibility of a

witness, because the Court is not an automation to mechanically compute all evidence on record without assessing the same in context of overall circumstances.

[31] While, therefore, now assessing the evidence of the complaint, very important aspect must be borne in mind and that is to ascertain that what is genesis of the prosecution case. The genesis of the prosecution case starts from the first demand of bribe by the accused and acceptance of the same followed by other three demands and acceptance. The fact goes to suggest that the first bribe of amount of Rs.75/- was paid to the accused on behalf of the complainant by his landlord one – Shri Gomabhai before 19th February, 1986. The second demand and acceptance of payment of bribe was of Rs.100/- on 19th February, 1986. When according to the complainant he met the accused for regularization of his leave period. The third, on 4th March, 1986, when the inspection was carried out and the accused accepted an amount of Rs.85/- from the

complainant and forth one on 1st May, 1986 for which the trap was led. It cannot be said that if the first three incidents are not proved, the fourth incident cannot be said to have been proved. Though all the four incidents are integral part of the prosecution case, even then if one of them for example for the bribe transaction took place on 1st May, 1986 for which trap was led is proved, the crime is committed and the accused would be held guilty, but the other three incidents are required to be appreciated for the simple reason that they are part of the prosecution case and for which the charge is also framed, not only that to some what extent, the fourth incident of 1st May, 1986 is linked with earlier other three occasions and moreover the performance of the complainant is disclosed through those incidents so as to include within the scope of ascertaining the credibility of the witness. Therefore, while assessing the credibility of the complainant as aforesaid attending circumstances will have to be taken into consideration. Therefore, thus, the

genesis of the prosecution case is required to discuss as disclosed by the evidence of the complainant and then to assess that what credibility and weigh can be attach to the say of the complainant.

[32] Learned advocate for the appellant made an attempt to bring about certain contradictions between the FIR and the deposition of the witnesses i.e. P.W.2 – Jitendrakumar, complainant. True that FIR is a proved document and is admissible in evidence, but when contradiction is found in the deposition of the first informant and his complaint, the attention of the first informant is required to be drawn to his complaint and then the contradiction can be proved. In my humble view, it is not legal method to compare the deposition and the FIR though exhibited to read together and to find out the contradiction because this would be in the clear breach of Section 145 of the Evidence Act. It is made clear that during trial, the attention of the witness i.e. P.W.2 could not be drawn to the

complainant and he was not confronted in a manner which is required by law.

[33] Apart from that assessing the evidence of the complainant for the purpose of finding out the intrinsic worth of a witness. What is strikingly emerges is the enmity between the complainant and the accused in respect of their relationship one as an Area Inspector and the other a stipendiary teacher. It is an admitted fact that for the period from 13th February, 1986 to 19th February, 1986, the complainant was absent from his duty. He submitted that for 15th February, 1986, he had preferred one leave report to his head master. In this respect, it is established that the said casual leave report was never forwarded by him endorsing upon that an outward number. Even then though in his deposition, however, he submitted that he had preferred that report. During his absence, the accused inspected his school that too is an admitted fact. Examining the genesis of the prosecution case, for the credibility of the

witnesses, it is necessary to refer to the deposition of the complainant, when he says that during that period his landlord Gomabhai paid Rs.75/- on his behalf to the accused for unauthorised absent of the complainant from his duty. This fact is required to be tested as to ascertain the veracity of the witness and this being very important attending circumstances of the prosecution case, when truth is endeavor to be found out. It is clear that Gomabhai is not examined. Not only that it appears from the record that the accused did not condone the absence of the appellant and on the contrary, on 20th February, 1986, the accused made report to the Education Officer stating that he had visited Gundikheda school on 18th February, 1986 and the complainant was not found present. Not only that in the said report, he also submitted that he inquired about it and found that the complainant was on leave from 14th February, 1986 and he preferred a report for one day only on 15th February, 1986 that was not entered in outward register. Not only that but on that very day i.e.

on 18th February, 1986, he made an endorsement in a visit book kept at the school that the complainant was not present and was unauthorisedly absent from his duty. It appears that the accused did not favour the complainant for his absence from his duty from 14th February, 1986 to 19th February, 1986. Ex.28 is the report given by the accused on 20th February, 1986 and this document is part and parcel of the prosecution case as has been submitted on record by the prosecution. Now in these circumstances, what is required to be taken into consideration is how far the say of the complainant is true that on behalf of him Shri Gomabhai paid Rs.75/- by way of bribe to the accused on behalf of the complainant. Likewise, the say of the complainant requires scrutiny that he met the accused on 19th February, 1986 and sought advise about his unauthorised absent where the accused allegedly stated that the report was not necessary and matter would be taken care of, if the complainant paid to the accused an amount of Rs.100/- which the complainant paid to him. In view of Ex.28 as

aforesaid, the say of the complainant that he paid Rs.75/- firstly through Gomabhai and then on 19th February, 1986 inspire no confidence as on 20th February, 1986 itself, the accused made report against the complainant, and he also noted this in the visit book, which was kept in the school and, therefore, the question of paying of Rs.100/- on 19th February, 1986 by the complainant to the accused does not stand to reason. Visit book is produced by prosecution at Ex.26. It could also be presumed that the complainant must be aware of the endorsement made by the accused in Ex.26. There was no cause for the complainant to see the accused on 19th February, 1986. Moreover nothing is coming from the evidence of complainant that anything was discussed about the endorsement made by the accused in visit book.

[34] One more circumstance which requires to be taken into consideration along with this fact to ascertain the credibility of the complainant is the document produced by the prosecution and i.e. a weekly diary of the accused. It appears

that on 19th February, 1986, according to the prosecution, documents on record at Ex.14, the accused was at village Navagam on his official duty. The complainant might have met the accused at Navagam on 19th, but that fact is not stated by him in his deposition and he vaguely states that he met the accused on 19th February, 1986, but when and where, is not stated by him. It may not be a impossible that the complainant might not or could not meet the accused on 19th February, 1986, but then the complainant could have said so in his deposition. On the next day i.e. 20th February, 1986, the accused made his report to his superior, further creates the doubt in the say of the complainant to have given to the accused Rs.100/- for regularization of leave, or to regularize unauthorised absent. Noteworthy it is here that it was not within the power of the accused to regularize absence of the complainant and third day of visit he made an adverse report which is proved fact.

[35] Same is the case of 4th March, 1986 on the day when the accused visited the school and carried out annual inspection. That annual inspection is part and parcel of the prosecution case and placed at Ex.37 on record. The said annual inspection was carried out in the presence of the complainant. While going through that inspection report which is dated 4th March, 1986 and when nothing further was required to be done in this respect by the accused, the say of the complainant that on that day he paid Rs.85/- to the accused becomes doubtful as the inspection report at Ex.37 contains no remarks adverse to the appellant, except that the appellant remained absent from his duty and that is found from page-8, column No.10 of the said inspection report wherein the accused observed that the teachers were not attending the school regularly except that nothing adverse is mentioned in this inspection report and this inspection report contains the signature of the complainant also. It appears that on 4th March, 1986, this report was completed and nothing was done further in

this respect. In this view of the matter, from the circumstances appears from the prosecution case itself, it appears that the say of the complainant that accused demanded the amount for making good remarks in respect of the complainant and complainant paid Rs.85/- appears to be very highly doubtful. True that the complainant had approached the then Hon'ble Education Minister and made his grievance in respect of the accused. But none could be examined by the prosecution to ascertain that what were exactly the grievance made by the complainant against the accused as the application which he submitted could not be placed on record which is evident from the correspondence exchanged between Anti Corruption Bureau Office and the concerned Minister at Ex.34, 35 and 36. Therefore, only because the complainant made grievance before the Hon'ble Education Minister it could not be inferred that what is stated in respect of these three incidents of bribe, the complainant was truthful witness. So if the evidence of the complainant is examined from view point of creditworthiness, he

is found not truthful in this respect of the prosecution case. True it is that the principle of *falsus in uno, falsus in omnibus* in not applicable to criminal trial. But the question is whether this witness can be relied upon for the trap led on 1st May, 1986 where certain facts which are material part of the prosecution case rests exclusively upon the say of the complainant and complaint only.

[36] What is found from his evidence is while accepting Rs.85/- on 4th March, 1986, the accused stated to the complainant that the complainant was required to pay more amount for making good remarks of the complainant and as per the prosecution document itself when it is found that the inspection report was prepared on 4th March, 1986 itself and was signed by the complainant wherein some instructions, the administrative in nature were given to the complainant. This is material again, because it has a link with the incident occurred on 1st May, 1986. It must be borne in mind that what was the position of 4th

March, 1986 in respect of inspection report ensued the demand of 1st of May and that is the say of the complainant. Now the say of the complainant is, on 1st May, 1986 at Godhra Bus Stand, the accused demanded an amount of Rs.100/- for amending adverse remarks in respect of the complainant. The creditworthiness of the witness can be judged when he deposes in respect of the purpose for demand of bribe by the accused. He changes his versions about the purpose of demanding bribe by the accused. Firstly, there were no adverse remarks during inspection and that the question of amending the remarks did not arise at all then how a complainant would pay Rs.100/- to the accused for improbable cause. Accused had no role to play so far as permanency of the job of the complainant was concerned.

[37] Along with the above circumstances, it must be considered that the time gap from 4th March, 1986 to 1st May, 1986 elapsed during this period. It is not the case of the complainant that any demand was made during this period. Very

important factor emerges from the prosecution case is an admitted position by all concerned that on 1st of each English calender month always a meeting used to take place in District Panchayat Office of Godhra in which including the accused, all concerned of Education Department perhaps, except teachers were required to remain present. This fact was very well within the knowledge of the complainant. As aforesaid, when the circumstances of the case are considered with reference to the above said appreciation of evidence of the complainant in respect of 4th March, 1986 and purpose of demand on 1st May, 1986 by the accused, it appears that the complainant did know that on 1st May, 1986 in all probability the accused was likely to be available at Godhra because invariably the accused was required to be present in the said meeting mandatorily taking place on first of each month. Therefore, the demand made by the accused at Bus Stand of Godhra and direction to place the amount of Rs.100/- in an envelope is viewed from this angle. It must further be noted that the direction of the

accused to keep the amount of bribe in closed envelope as per the prosecution case, on appreciation reveals two facades. The purpose for concealing currency note for accused may be that, in District Panchayat Office where the persons of whole of the department might be present, nobody should notice that accused takes currency notes from the complainant. This is on facade. The other possibility is, the complainant knew that the accused may not accept the open currency note and if the same is concealed in envelope, it was likely to be accepted by the accused on the pretext of the census report. This is second facade of the possibilities which out of two is probable, could be concluded after weighing evidence and to ascertain that where the truth lies? The credibility of complainant, therefore, is scanned throughly.

[38] The reliance can be placed on the evidence of the complainant in the fact and circumstances of the case in respect of demand made on 1st May 1986 if other three witnesses as

aforesaid are corroborating him. It is also strange that between 4th March, 1986 to 1st May, 1986, the accused and the complainant are not met. But suddenly, the accused sends a message to Gomabhai, landlord of the complainant that the complainant was required to see the accused on 30th April, 1986. Again material it is to be noted here that Gomabhai is not examined. It is not understood that why the directions were not issued by the accused to the complainant to place that note in an envelope on earlier occasion. According to the complainant himself, the amount was accepted openly. One more fact which affect the credibility of the complainant, is the fact that the meeting of the complainant and the accused at Godhra Bus Stand is a chance meeting. It is not the case of the complainant or the prosecution that the complainant was directed to see the accused at certain hours and at certain juncture, but it clearly appears that it was within the mind of the complainant that on 1st May, 1986 in any case, the accused was to come to Godhra and was to attend the said meeting. This

story of the complainant meeting the accused at Godhra Bus Stand more becomes doubtful for the reasons and attending circumstances that in absence of any instruction from the accused, how the complainant led himself to believe that the accused was to come to Bus Stand at Godhra at 10.45 hours on 1st May, 1986. There is no explanation coming forward from the prosecution or from the complainant. It is not explained why the complainant waited at the Bus Stand at Godhra upto 10.45 hours. If this aspect is taken into consideration then it becomes doubtful that whether the accused directed the complainant to bring the amount in an envelope. In respect of meeting of complainant and accused at Godhra Bus Stand only evidence is available is of complainant and for the above circumstances, wider dents are visible in the credibility of the complainant. This is the dilemma arises from the prosecution case from the evidence of the complainant. In his cross-examination, he has stated that he came to Godhra early from Dahod and he waited in a Bus Stand of Godhra as he

ascertained that the accused was to reach at Godhra Bus Stand from somewhere. On probability this story becomes doubtful for one more reason that the accused was an Area (Bit) Inspector. His duty was to inspect the primary school of the villages. It is an admitted fact that the village Gundikheda or Himala where the complainant was staying was within the jurisdiction of the accused. Then in that case, what was the reason for the accused to summon the complainant at Godhra or Dahod for demanding the amount of bribe. It would have been easier for the accused in natural course to visit to school of the complainant or village Himala where he was staying and to obtain the amount of bribe safely where the trap could not be led, unless the same is arranged in well advanced. This circumstance suggests that the say of the complainant that he met the accused at Godhra Bus Stand becomes doubtful. It is pertinent to note that in these circumstances, whatever took place during the trap is to be considered as stated by the complainant. In his deposition, the complainant

states that he himself and two panchas were standing near the canteen and accused came there. It must be remembered that panchas deposed that the complainant and accused both together walked upto the canteen without any conversation. The complainant says that the accused asked that had he brought that amount and he took out that envelope and handed over the same to the accused and signal being given by the panch, the raiding party reached at the spot and recovered the said envelope. It is also not understood that why the said envelope was not treated with anthracene powder as to ascertain that the said envelope was given to the accused. Apart from that as above said, the credibility of the complainant is doubtful for the reasons stated above, his say about the demand made by the accused in the District Panchayat Office also cannot safely be relied upon. Pertinent here it is to note that the panchas have not supported the complainant in respect of demand made by the accused in the compound of District Panchayat Office at the time of raid. When this case hinges only on the

evidence of the complainant and it is found that his evidence is not creditworthy, the demand made by the accused though deposed by the complainant is required to be corroborated by the independent witnesses i.e. Panchas.

[39] It is not the rule of law that in all bribery cases, the complainant or the bribe giver is required to be corroborated by the independent witnesses. In many cases, the conviction is based and confirmed by the Apex Court relying upon the evidence of Investigating Officer, if the same is found trustworthy. There may be cases where upon panchas being turned hostile, the conviction can be based upon on sole testimony of the bribe giver and his evidence cannot be jettison on the ground that the bribe giver is accomplished and always when bribe giver has a grouse against the accused, such complainant makes a complaint. Each case, therefore, has to be judged from the facts of a particular cases.

[40] Thus, this is peculiar kind of case where

it is not possible to find any reliance or assurance for conviction from the evidence of the panch witnesses or Investigating Officer. It is unfortunate that learned trial Judge nor the prosecutor conducting the trial were live to the case and panchnama could not be proved in legal manner. Therefore, position emerges that what is admitted by the accused in defence to have accepted the envelope is stated by both the panchas and nothing beyond that. An attempt is not made even in the deposition of PI Shri Rangdekar to prove the panchnama as to disclose the original prosecution case in respect of what actually transpired while trap was led in District Panchayat Office compound. The creditworthiness of the say of the complainant in this particular case is examined as aforesaid and it is found that this is not a mere case of contradictions here and there, but this is a case where the complainant attempted to depose falsity and against the established fact and attending circumstances clearly emerging from the case. Placing reliance upon such witnesses to base

conviction is unsafe in serious cases like this one. The decisions submitted by learned advocate for the appellant-accused, are the decisions on the facts of those cases. What is material is as above said whether important part of the prosecution case inspires confidence. In some cases acceptance of bribe by the accused, demand could be inferred without any hesitation and it is not required in such cases to even prove in any clear term the demand of bribery. This is the law as it stands today. What appears in this case is acceptance of envelope by the accused and as aforesaid, the culpable state of mind which is known as mens rea on the part of the accused could not be established by credible evidence. It is found that there is no hesitation on the part of the accused to admit that he had accepted that envelope from the complainant, but understanding the same to be a census report. In this view of the matter, it is felt that when the prosecution is not able to prove his case beyond reasonable doubt and when the evidence puts the Court in dilemma, benefit of doubt must go to the accused

and probability of the defence may not be required to be discussed. The circumstances emerging from the evidence of the prosecution particularly of complainant leads to uncertainty. No Court can ever afford to ignore the other side of the coin that for the purpose which can be probabalised from the record and circumstances of the case, susceptible view also emerges that whether the trap led is to finish the carrier of a Government employee. The baffling question that would obviously arise is, therefore, as to where lies the truth. Does it lie in the allegations levelled by the complainant against the Government employee or does it lie in the allegations probabalised by the accused, Government employee. Thus, when the Court finds itself on horns of dilemma and at cross-roads as to find out the way where lies the truth, the rough and ready answer and obvious mandate given by the criminal jurisprudence is to abandon the exercise in futility in search of the truth and better give the benefit of doubt to the accused by way of abundant caution. Under perplexing

circumstances as discussed above, if the evidence of the complainant is not found free from doubt the order of conviction and sentence on such tainted evidence would not only be unjust, illegal and improper, but it would also certainly be demoralized efficiency of public administration.

[41] Therefore, it would be in fitness of things to give benefit of doubt to the accused. When material part of the say of the witness i.e. complainant is not free from doubt as aforesaid, the learned Judge was clearly fell in error to rely upon the evidence of the complainant to convict the accused-appellant for the charges levelled against him and that too without assigning any reasons or appreciating the evidence in proper perspective.

[42] In above view of the matter, Criminal Appeal No.33/1994 filed by the appellant – accused of Special (Corruption) Case No.10/1989 of the Court of learned Special Judge, Panchmahal

at Godhra is allowed. The judgment and order impugned in this appeal as delivered by the Special Judge, Panchmahal at Godhra in Special (Corruption) Case No.10/1989 convicting the present appellant – accused is set aside and the appellant – accused is acquitted on reasonable benefit of doubt from the charges levelled against him under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947 as well as under the charges levelled against him under Section 161 of the Indian Penal Code. The orders passed by the trial Judge in respect of muddamal etc. in Special (Corruption) Case No.10/1989 is left uninterfered with. The amount of fine if paid by the appellant – accused be refunded to him. The bail bonds of the appellant stand cancelled.

Criminal Appeal No.491/1994 preferred by the State for enhancement of sentences stands dismissed.

[J. R. VORA,J.]

(vijay)